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DEREGULATION OF SURFACE FREIGHT FORWARDERS

(99–49)

ORIGINAL

HEARING

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION

OF THE

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

SECOND SESSION

ON

S. 1124

TO AMEND TITLE 49, UNITED STATES CODE, TO REDUCE REGULATION OF SURFACE FREIGHT FORWARDERS, AND FOR OTHER PURPOSES

JUNE 18, 1986

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Calendar No. 264

99TH CONGRESS
1ST SESSION

S. 1124

[Report No. 99–120]

To amend title 49, United States Code, to reduce regulation of surface freight forwarders, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 14 (legislative day, APRIL 15), 1985

Mr. PACKWOOD introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

JULY 31 (legislative day, JULY 16), 1985

Reported by Mr. DANFORTH, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend title 49, United States Code, to reduce regulation of surface freight forwarders, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

~~That this Act may be cited as the "Surface Freight Forwarder Deregulation Act of 1985".~~

PURPOSE

SEC. 2. This Act is part of the continuing effort by Congress to reduce burdensome and unnecessary Government regulations and to ensure the competitiveness and efficacy of transportation services of surface freight forwarders in the United States.

FINDINGS

SEC. 3. The Congress finds that—

(1) a safe, sound and competitive surface freight forwarder industry is important to the national transportation system;

(2) the statutes governing Federal regulation of the freight forwarder industry are outdated and must be revised to reflect present and future transportation needs and realities;

(3) protective regulation has resulted in anticompetitive pricing and has restricted the range of price and service options available to shippers;

(4) in order to reduce the uncertainty experienced by the Nation's transportation industries, the Interstate Commerce Commission's remaining responsibilities for the regulation of surface freight forwarders should be eliminated by Act of Congress; and

(5) legislative and resulting changes should be implemented with the least amount of disruption consistent with achieving the reforms enacted.

DEFINITIONS

SEC. 4. Section 10102 of title 49, United States Code, is amended—

(1) in paragraph (2), by inserting ", and a freight forwarder" immediately before the period;

(2) in paragraph (6), by inserting ", and a freight forwarder" immediately before the period; and

(3) in paragraph (9)—

(A) by inserting "and" at the end of subparagraph (A);

(B) in subparagraph (B), by striking "; and" and inserting in lieu thereof a period; and

(C) by striking subparagraph (C).

INTERSTATE COMMERCE COMMISSION ADMINISTRATION

SEC. 5. (a) Section 10328(b)(2) of title 49, United States Code, is amended by striking "or freight forwarders".

(b) Section 10329 of title 49, United States Code, is amended—

(1) in subsection (a)(2)—

(A) by striking ", or a freight forwarder";

(B) by inserting "or" immediately after "broker"; and

(C) by striking "II, III, or IV" and inserting in lieu thereof "II or III";

(2) in subsection (c)(3), by striking "or freight forwarder" wherever it appears; and

(3) in subsection (d), by striking "(1)", and by striking "or (2) a freight forwarder,".

JURISDICTION

SEC. 6. (a) Section 10521(a) of title 49, United States Code, is amended by inserting ", except by a freight forwarder," immediately after "transportation" the second time it appears.

(b) Section 10523 of title 49, United States Code, is amended—

(1) in subsection (a)(1)(B)(i), by inserting "or" immediately after the semicolon;

(2) in subsection (a)(1)(B)(ii), by striking "or" and inserting in lieu thereof "and";

(3) by striking subsection (a)(1)(B)(iii);

(4) in subsection (a)(1)(C), by striking "or service provided by the freight forwarder";

(5) in subsection (a)(2), by inserting "and" immediately after "rail carrier,"; and by striking "; and under subchapter IV of this chapter when provided by such a freight forwarder";

(6) in subsection (b)(1)(B)(ii), by inserting "or" immediately after the semicolon;

(7) in subsection (b)(1)(B)(iii), by striking "; or" and inserting in lieu thereof a period;

(8) by striking subsection (b)(1)(B)(iv); and

(9) in subsection (b)(2)—

(A) by striking "or service provided by the freight forwarder for whom the transportation was provided";

(B) by inserting "and" immediately after "for such a motor carrier;"; and

(C) by striking ", and under subchapter IV of this chapter when provided for such a freight forwarder".

(c)(1) Section 10561 of title 49, United States Code, is repealed.

(2) The section analysis of chapter 105 of title 49, United States Code, is amended by striking

"10561. General jurisdiction."

and inserting in lieu thereof

"10561. Repealed.".

(d)(1) Section 10562 of title 49, United States Code, is repealed.

(2) The section analysis of chapter 105 of title 49, United States Code, is amended by striking

"10562. Exempt freight forwarder service."

and inserting in lieu thereof

"10562. Repealed.".

RATES, TARIFFS, AND VALUATIONS

SEC. 7. (a) Section 10701(d) of title 49, United States Code, is amended by striking "II, III, or IV" and inserting in lieu thereof "II or III".

(b) Section 10704 of title 49, United States Code, is amended—

(1) in subsection (b)(1)(A), by inserting "or" immediately after the semicolon;

(2) in subsection (b)(1)(B), by striking "or";

(3) by striking subsection (b)(1)(C);

(4) in subsection (b)(2), by striking "or a freight forwarder"; and

(5) in subsection (b)(4), by striking "or a freight forwarder" and "or the inherent nature of freight forwarding, respectively".

(c) Section 10706 of title 49, United States Code, is amended—

(1) in subsection (a)(2)(A), by striking "(c)(1)(B)-(E)" and inserting in lieu thereof "(d)(1)(B)-(D)"; and

(2) by striking subsection (d)(1)(E).

(d) Section 10708 of title 49, United States Code, is amended—

(1) in subsection (d)(1), by striking "or freight forwarder"; and

(2) in subsection (d)(2), by striking "or freight forwarders" wherever it appears.

(e) Section 10722(d)(2) of title 49, United States Code, is amended by striking the second sentence.

(f)(1) Section 10795 of title 49, United States Code, is repealed.

(2) The section analysis of chapter 107 of title 49, United States Code, is amended by striking

"10795. Special freight forwarder rates."

and inserting in lieu thereof

"10795. Repealed.".

(g) Section 10730(a) of title 49, United States Code, is amended—

(1) by striking "I, II, or IV" and inserting in lieu thereof "I or II"; and

(2) by striking the last sentence.

(h) Section 10741 of title 49, United States Code, is amended—

(1) by striking subsection (c); and

(2) by redesignating subsections (d) through (f) as subsections (c) through (e), respectively.

(i) Section 10742(b)(2) of title 49, United States Code, is amended by striking "(including a motor common carrier being used by a freight forwarder)".

(j)(1)(A) The heading of section 10749 of title 49, United States Code, is amended by striking "and limitation on use of common carriers of freight forwarders".

(B) The item relating to section 10749 in the section analysis of chapter 107 of title 49, United States Code, is

amended by striking "and limitation on use of common carriers by freight forwarders".

(2) Section 10749 of title 49, United States Code, is amended—

(A) by striking "(a)"; and

(B) by striking subsection (b).

(k) Section 10762 of title 49, United States Code, is amended—

(1) in subsection (a)(2)—

(A) by striking "II, III, or IV" wherever it appears and inserting in lieu thereof "II or III" in each such place; and

(B) by striking "or by a freight forwarder";

(2) in subsection (b)(1), by striking "I, III, or IV" and inserting in lieu thereof "I or III"; and

(3) in subsection (b)(1)(C), by striking "or IV".

(l) Section 10766 of title 49, United States Code, is amended—

(1) by striking subsection (a);

(2) in subsection (b)—

(A) by striking "(b)";

(B) by striking "providing service subject to the jurisdiction of the Commission under that subchapter";

(C) by striking the second sentence; and

(D) by striking the last two sentences; and

(3) by striking subsection (c).

LICENSING

SEC. 8. (a)(1)(A) The heading of section 10922 of title 49, United States Code, is amended by striking "and freight forwarders".

(B) The item relating to section 10922 in the section analysis of chapter 109 of title 49, United States Code, is amended by striking "and freight forwarders".

(b) Section 10923 of title 49, United States Code, is amended—

(1) in subsection (a)—

(A) by striking "or to provide service subject to that jurisdiction under subchapter IV of chapter 105 as a freight forwarder,"; and

(B) in paragraph (2), by striking "or service";

(2) in subsection (b)(1), by striking "or to provide service as a freight forwarder";

(3) by striking subsection (b)(7);

(4) in subsection (c)—

(A) in paragraph (1), by inserting "and" immediately after the semicolon;

(B) in paragraph (2), by striking "; and" and inserting in lieu thereof a period; and

(C) by striking paragraph (3);

~~(5) in subsection (d)(1), by striking "or freight forwarder"; and~~

~~(6) in subsection (d)(3)(B), by striking "or freight forwarder".~~

~~(b) Section 10925 of title 49, United States Code, is amended—~~

~~(1) in subsection (b)(1), by striking "broker, or freight forwarder," and inserting in lieu thereof "or broker,";~~

~~(2) in subsection (c)(1), by striking "or freight forwarder";~~

~~(3) in subsection (d)(1), by striking ", a permit of a freight forwarder,";~~

~~(4) in subsection (d)(1)(A)—~~

~~(A) by striking "; and" and inserting in lieu thereof a period; and~~

~~(B) by striking "(A)"; and~~

~~(5) by striking subsection (d)(1)(B).~~

~~(c) Section 10926 of title 49, United States Code, is amended—~~

~~(1) in paragraph (1), by inserting "and" immediately after the semicolon;~~

~~(2) in paragraph (2), by striking "; and" and inserting in lieu thereof a period; and~~

~~(3) by striking paragraph (3).~~

(d) Section 10927(c) of title 49, United States Code, is amended—

(1) by striking paragraph (1); and

(2) in paragraph (2)—

(A) by striking "(2)"; and

(B) by striking "providing service under a permit" and "under this subtitle".

(e) Section 10930 of title 49, United States Code, is amended—

(1) by striking "(a)"; and

(2) by striking subsection (b).

(f)(1) Section 10933 of title 49, United States Code, is repealed.

(2) The section analysis of chapter 109 of title 49, United States Code, is amended by striking

"10933. Authorizing abandonment of freight forwarder service."

and inserting in lieu thereof

"10933. Repealed."

OPERATIONS OF CARRIERS

SEC. 9. (a) Section 11101(b) of title 49, United States Code, is amended—

(1) by striking "and freight forwarders";

(2) by striking "subchapters II and IV" and inserting in lieu thereof "subchapter II"; and

(3) by striking "and for" and inserting in lieu thereof "including".

(b)(1) Section 11127 of title 49, United States Code, is repealed.

(2) The section analysis of chapter 111 of title 49, United States Code, is amended by striking

"11127. Service of freight forwarders."

and inserting in lieu thereof

"11127. Repealed."

(c) Section 11141(1) of title 49, United States Code, is amended by striking "(except a freight forwarder)".

(d) Section 11142 of title 49, United States Code, is amended by striking "II, III, and IV" and inserting in lieu thereof "subchapters II and III".

FINANCE

SEC. 10. (a) Section 11323 of title 49, United States Code, is repealed.

(b) The section analysis of chapter 113 of title 49, United States Code, is amended by striking

"11323. Limitation on ownership of other carriers by freight forwarders."

and inserting in lieu thereof

"11323. Repealed."

FEDERAL-STATE RELATIONS

SEC. 11. (a) Section 11501 of title 49, United States Code, is amended—

(1) by striking subsection (a);

(2) by redesignating subsection (b) through (f) as subsections (a) through (e), respectively; and

(3) by adding at the end thereof the following new subsection:

"(f) No State or political subdivision thereof and no interstate agency or other political agency of two or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to interstate rates, interstate routes, or interstate services of any freight forwarder.".

(b) Section 11502 of title 49, United States Code, is amended—

(1) in subsection (a)(1), by striking "I, III, or IV" and inserting in lieu thereof "I or III"; and

(2) in subsection (b), by striking "or IV".

(c) Section 11505 of title 49, United States Code, is amended—

(1) in subsection (a), by striking "(a)"; and

(2) by striking subsection (b).

ENFORCEMENT; INVESTIGATIONS, RIGHTS, AND REMEDIES SEC. 12. (a) Section 11702(a) of title 49, United States Code, is amended—

(1) in paragraph (1), by striking "or 10923";

(2) in paragraph (5), by striking "; and " and inserting in lieu thereof a period; and

(3) by striking paragraph (6).

(b)(1) Section 11704 of title 49, United States Code, is repealed.

(2) The section analysis of chapter 117 of title 49, United States Code, is amended by striking

"11704. Action by a private person to enjoin abandonment of service."

and inserting in lieu thereof

"11704. Repealed.".

(c) Section 11705(b)(3) of title 49, United States Code, is amended by striking "or IV".

(d) Section 11707(a) of title 49, United States Code, is amended—

(1) in paragraph (1), by striking "I, II, or IV" wherever it appears and inserting in lieu thereof "I or II" in each such place; and

(2) in paragraph (2), by striking "subject to this subtitle".

(e)(1)(A) The heading of section 11708 of title 49, United States Code, is amended by striking "and freight forwarder".

(B) The item relating to section 11708 in the section analysis of chapter 117 of title 49, United States Code, is amended by striking "and freight forwarder".

(2) Section 11708(a) of title 49, United States Code, is amended by striking "or service of a freight forwarde ".

CIVIL AND CRIMINAL PENALTIES

SEC. 13. (a) Section 11904 of title 49, United States Code, is amended by striking subsection (d).

~~(b)(1) Section 11908 of title 49, United States Code, is repealed.~~

~~(2) The section analysis of chapter 119 of title 49, United States Code, is amended by striking~~

~~"11908. Abandonment of service by freight forwarder."~~

~~and inserting in lieu thereof~~

~~"11908. Repealed.".~~

~~(c) Section 11909 of title 49, United States Code, is amended by striking subsection (d).~~

~~(d) Section 11910(a) of title 49, United States Code, is amended by striking paragraph (4).~~

~~(e) Section 11914 of title 49, United States Code, is amended by striking subsection (d).~~

~~EFFECTIVE DATE~~

~~SEC. 14. This Act shall become effective 60 days after the date of enactment of this Act.~~

That this Act may be cited as the "Surface Freight Forwarder Deregulation Act of 1985".

PURPOSE

SEC. 2. This Act is part of the continuing effort by Congress to reduce burdensome and unnecessary government regulations and to ensure the competitiveness and efficacy of transportation services of surface freight forwarders in the United States.

FINDINGS

SEC. 3. The Congress finds that—

(1) a safe, sound and competitive surface freight forwarder industry is important to the national transportation system;

(2) the statutes governing Federal regulation of the freight forwarder industry are outdated and must be revised to reflect present and future transportation needs and realities;

(3) protective regulation has resulted in anticompetitive pricing and has restricted the range of price and service options available to shippers;

(4) in order to reduce the uncertainty experienced by the Nation's transportation industries, the Interstate Commerce Commission's remaining responsibilities for the regulation of surface freight forwarders should be eliminated in accordance with this Act; and

(5) legislative and resulting changes should be implemented with the least amount of disruption consistent with achieving the reforms enacted.

DEFINITIONS

SEC. 4. Section 10102 of title 49, United States Code, is amended—

(1) in paragraph (2), by inserting, ", and a freight forwarder" immediately before the period;

(2) in paragraph (6), by inserting ", and a freight forwarder" immediately before the period; and

(3) in paragraph (9)—

(A) by inserting ", excluding persons using transportation of an air carrier subject to chapter 20 of this title," immediately after "compensation";

(B) by inserting "and" at the end of subparagraph (A);

(C) in subparagraph (B), by striking "; and" and inserting in lieu thereof a period; and

(D) by striking subparagraph (C); and

(E) by redesignating paragraphs (10) through (30) as paragraphs (11) through (31), respectively, and by inserting immediately after paragraph 9 the following new paragraph:

"(10) 'household goods freight forwarder' means a freight forwarder of one or more of the following commodities: (A) household goods; (B) unaccompanied baggage; or (C) used automobiles;".

INTERSTATE COMMERCE COMMISSION ADMINISTRATION

SEC. 5. (a) Section 10328(b)(2) of title 49, United States Code, is amended by inserting "household goods" immediately before "freight forwarder".

(b) Section 10329 of title 49, United States Code, is amended—

(1) in subsection (a)(2), by inserting "household goods" immediately before "freight forwarder";

(2) in subsection (c)(3), by inserting "household goods" immediately before "freight forwarder" wherever it appears; and

(3) in subsection (d), by inserting "household goods" immediately before "freight forwarder".

JURISDICTION

SEC. 6. (a) Section 10521(a) of title 49, United States Code, is amended by inserting ", except by a freight forwarder (other than a household goods freight forwarder)," immediately after "transportation" the second time it appears.

(b) Section 10523 of title 49, United States Code, is amended—

(1) in subsection (a)(1)(B)(iii), by inserting "household goods" immediately before "freight forwarder";

(2) in subsection (a)(1)(C), by inserting "household goods" immediately before "freight forwarder";

(3) in subsection (a)(2), by inserting "household goods" immediately before "freight forwarder";

(4) in subsection (b)(1)(B)(iv), by inserting "household goods" immediately before "freight forwarder"; and

(5) in subsection (b)(2), by inserting "household goods" immediately before "freight forwarder" wherever it appears.

(c) Section 10561 of title 49, United States Code, is amended by inserting "household goods" immediately before "freight forwarder" wherever it appears.

(d)(1) Section 10562 of title 49, United States Code, is repealed.

(2) The section analysis of chapter 105 of title 49, United States Code, is amended by striking

"10562. Exempt freight forwarder service."

and inserting in lieu thereof

"10562. Repealed.".

RATES, TARIFFS, AND VALUATIONS

SEC. 7. (a) Section 10704 of title 49, United States Code, is amended—

(1) in subsection (b)(1)(C), by inserting "household goods" immediately before "freight forwarder";

(2) in subsection (b)(3), by inserting "household goods" immediately before "freight forwarder"; and

(3) in subsection (b)(4), by inserting "household goods" immediately before "freight forwarder" and "freight forwarding, respectively".

(b) Section 10706 of title 49, United States Code, is amended—

(1) in subsection (a)(2)(A), by striking "(c)(1)(B)–(E)" and inserting in lieu thereof "(d)(1)(B)–(E)"; and

(2) in subsection (d)(1)(E), by striking "Freight" and inserting in lieu thereof "Household goods freight".

(c) Section 10708 of title 49, United States Code, is amended—

(1) in subsection (d)(1), by inserting "household goods" immediately before "freight forwarder"; and

(2) in subsection (d)(2), by inserting "household goods" immediately before "freight forwarders" wherever it appears.

(d) Section 10722(d)(2) of title 49, United States Code, is amended by inserting "household goods" immediately before "freight forwarder".

(e) Section 10725 of title 49, United States Code, is amended—

(1) in subsection (b) by inserting "household goods" immediately before "freight forwarders"; and

(2) in subsection (c), by inserting "household goods" immediately before "freight forwarder".

(f) Section 10730 of title 49, United States Code, is amended—

(1) in the last sentence of subsection (a), by inserting "by a household goods freight forwarder" immediately after "Commission" the first time it appears; and

(2) in subsection (b)(1), (A) by inserting "or a freight forwarder" immediately after "title" the first time it appears, and (B) by inserting ", with respect to a motor carrier," immediately after "including".

(g) Section 10741(c) of title 49, United States Code, is amended by inserting "household goods" immediately before "freight forwarder" wherever it appears.

(h) Section 10743(b)(2) of title 49, United States Code, is amended by inserting "household goods" immediately before "freight forwarder".

(i)(1) Section 10749 of title 49, United States Code, is amended by inserting "household goods" immediately before "freight forwarder" wherever it appears.

(2) The heading of section 10749 of title 49, United States Code, is amended by inserting "household goods" immediately before "freight forwarders".

(3) The item relating to section 10749 in the section analysis of chapter 107 of title 49, United States Code, is amended by inserting "household goods" immediately before "freight forwarders".

(j) Section 10762(a)(2) of title 49, United States Code, is amended by inserting "household goods" immediately before "freight forwarder".

(k)(1) Section 10766 of title 49, United States Code, is amended by inserting "household goods" immediately before "freight forwarder" wherever it appears.

(2) The heading of section 10766 of title 49, United States Code, is amended by striking "Freight" and inserting in lieu thereof "Household goods freight".

(3) The item relating to section 10766 in the section analysis of chapter 107 of title 49, United States Code, is amended by striking "Freight" and inserting in lieu thereof "Household goods freight".

LICENSING

SEC. 8. (a)(1) Section 10923 of title 49, United States Code, is amended by inserting "households goods" immediately before "freight forwarder" wherever it appears.

(2) The heading of section 10923 of title 49, United States Code, is amended by inserting "household goods" immediately before "freight forwarders".

(3) The item relating to section 10923 in the section analysis of chapter 109 of title 49, United States Code, is amended by inserting "household goods" immediately before "freight forwarders".

(b) Section 10925 of title 49, United States Code, is amended by inserting "household goods" immediately before "freight forwarder" wherever it appears.

(c) Section 10926 of title 49, United States Code, is amended by inserting "household goods" immediately before "freight forwarder" wherever it appears.

(d) Section 10927(c)(2) of title 49, United States Code, is amended—

(1) by inserting "household goods" immediately before "freight forwarder" the first time it appears;

(2) by inserting "or a freight forwarder" immediately after "permit"; and

(3) by inserting "household goods freight forwarder or the" immediately before "freight forwarder" the second time it appears.

(e) Section 10930(b) of title 49, United States Code, is amended by inserting "household goods" immediately before "freight forwarder" wherever it appears.

(f)(1) Section 10933 of title 49, United States Code, is amended by inserting "household goods" immediately before "freight forwarder" wherever it appears.

(2) The heading of section 10933 of title 49, United States Code, is amended by inserting "household goods" immediately before "freight forwarder".

(3) The item relating to section 10933 in the section analysis of chapter 109 of title 49, United States Code, is amended by inserting "household goods" immediately before "freight forwarder".

OPERATIONS OF CARRIERS

SEC. 9. (a) Section 11101(b) of title 49, United States Code, is amended by inserting "household goods" immediately before "freight forwarders".

(b)(1) Section 11127 of title 49, United States Code, is amended by inserting "household goods" immediately before "freight forwarder" and "freight forwarders" wherever they appear.

(2) The heading of section 11127 of title 49, United States Code, is amended by inserting "household goods" immediately before "freight forwarders".

(3) The item relating to section 11127 in the section analysis of chapter 111 of title 49, United States Code, is amended by inserting "household goods" immediately before "freight forwarders".

(c) Section 11141(1) of title 49, United States Code, is amended by inserting "household goods" immediately before "freight forwarder".

FINANCE

SEC. 10. (a) Section 11323 of title 49, United States Code, is amended by inserting "household goods" immediately before "freight forwarder" wherever it appears.

(b) The heading of section 11323 of title 49, United States Code, is amended by inserting "household goods" immediately before "freight forwarders".

(c) The item relating to section 11323 in the section analysis of chapter 113 of title 49, United States Code, is amended by inserting "household goods" immediately before "freight forwarders".

FEDERAL-STATE RELATIONS

SEC. 11. (a) Section 11501 of title 49, United States Code, is amended—

(1) in subsection (a), by striking "carrier" and inserting in lieu thereof "household goods freight forwarder"; and

(2) by adding at the end thereof the following new subsection:

"(g) No State or political subdivision thereof and no interstate agency or other political agency of two or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to interstate rates, interstate routes, or interstate services of any freight forwarder.".

(b) Section 11505(b) of title 49, United States Code, is amended by inserting "household goods" immediately before "freight forwarder".

ENFORCEMENT: INVESTIGATIONS, RIGHTS, AND REMEDIES

SEC. 12. (a) Section 11705 of title 49, United States Code, is amended—

(1) in subsection (a), by inserting "or a freight forwarder" immediately after "title";

(2) in subsection (b)(1), (A) by inserting "or a freight forwarder" immediately after "title" the first time it appears, and (B) by inserting "or the applicable freight forwarder rate" immediately after "title" the second time it appears; and

(3) in subsection (b)(3), by inserting "or a freight forwarder" immediately after "title".

(b) Section 11706 of title 49, United States Code, is amended—

(1) in subsection (a), by inserting "or a freight forwarder" immediately after "title";

(2) in subsection (b), by inserting ", except that, in the case of a freight forwarder, such civil action must begin within 2 years after the claim accrues" immediately before the period at the end of the first sentence; and

(3) in subsection (d), (A) by striking "3-year period" wherever it appears and inserting in lieu thereof "2- or 3-year periods", and (B) by striking "is" the first time it appears and inserting in lieu thereof "are".

(c) Section 11707(a) of title 49, United States Code, is amended—

(1) in paragraph (1), (A) by inserting ", or a freight forwarder," immediately after "title" the first time it appears, and (B) by inserting ", except in the case of a freight forwarder," immediately after "and" in the third sentence; and

(2) in paragraph (2), by striking "subject to this subtitle".

(d)(1) Section 11708(a) of title 49, United States Code, is amended by inserting "household goods" immediately before "freight forwarder".

(2) The heading of section 11708 of title 49, United States Code, is amended by inserting "household goods" immediately before "freight forwarder".

(3) The item relating to section 11708 in the section analysis of chapter 117 of title 49, United States Code, is amended by inserting "household goods" immediately before "freight forwarder".

CIVIL AND CRIMINAL PENALTIES

SEC. 13. (a) Section 11904(d)(1) of title 49, United States Code is amended by inserting "household goods" immediately before "freight forwarder" wherever it appears.

(b)(1) Section 11908 of title 49, United States Code, is amended by inserting "household goods" immediately before "freight forwarder" wherever it appears.

(2) The heading of section 11908 of title 49, United States Code, is amended by inserting "household goods" immediately before "freight forwarder".

(3) The item relating to section 11908 in the section analysis of chapter 119 of title 49, United States Code, is amended by inserting "household goods" immediately before "freight forwarder".

(c) Section 11909(d) of title 49, United States Code, is amended by inserting "household goods" immediately before "freight forwarder" wherever it appears.

(d) Section 11910(a)(4) of title 49, United States Code, is amended by inserting "household goods" immediately before "freight forwarder" wherever it appears.

EFFECTIVE DATE

SEC. 14. This Act shall become effective 60 days after the date of enactment of this Act.

DEREGULATION OF SURFACE FREIGHT FORWARDERS

WEDNESDAY, JUNE 18, 1986

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:10 a.m., in room 2253, Rayburn House Office Building, Hon. Glenn M. Anderson (chairman of the subcommittee) presiding.

Mr. ANDERSON. The meeting of the subcommittee will come to order.

The Subcommittee on Surface Transportation is meeting today to receive testimony on S. 1124, a bill to reduce regulation of surface freight forwarders and for other purposes, which passed the Senate on November 4, 1985.

Clearly freight forwarders play an important role in the transportation system of our Nation. They are, however, subject to regulation by the ICC for entry into the market, ratemaking, securities liability, limitation on ownership, and Federal/State relations.

S. 1124, while deregulating much of the regulation over general commodity freight forwarders, retains the ICC regulation in the areas of cargo liability and claims settlement procedures. It also retains current ICC regulation over household goods freight forwarders, and your testimony today will be extremely useful in determining the need for freight forwarder deregulation.

Do you have an opening statement, Bud?

Mr. SHUSTER. I support and associate myself with your remarks.

Mr. ANDERSON. Thank you.

Our first witness today is Philip Haseltine, the Deputy Assistant Secretary for Policy and International Affairs of the Department of Transportation.

Mr. Haseltine, we do have your prepared statement. It will be made a matter of the record. You can read it, extemporize or proceed in any way you wish. The floor is yours, sir.

TESTIMONY OF PHILIP HASELTINE, DEPUTY ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, U.S. DEPARTMENT OF TRANSPORTATION

Mr. HASELTINE. Thank you, Mr. Chairman, and members of the committee. I appreciate your inviting me here today to discuss the Department of Transportation's views regarding freight forwarder deregulation. I have a short version of my statement. I will not go

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through the longer version that was provided to the subcommittee, Mr. Chairman.

Although the Motor Carrier Act of 1980 has provided significant new operational freedoms and reduced regulatory burdens for common and contract motor carriers, most of these benefits have yet to be provided freight forwarders. We believe that the regulatory changes proposed by S. 1124 are especially worthy of support, since freight forwarder deregulation is dictated by equity considerations as well as by the principles of economic efficiency. Further, S. 1124 is very similar to the Administration's bill which was submitted to the Congress last September and has yet to be introduced.

Forwarders have no economic characteristics warranting regulation for efficiency reasons, such as substantial fixed costs and scale economies. The only basis for their regulation, beginning with the Freight Forwarder Act of 1942, was to provide consistency with the regulation of other freight modes. Forwarders must now compete on inequitable terms with other types of rapidly-expanding third parties—shippers' associations, shippers' agents, and property brokers—which are virtually unregulated. Many forwarders are also disadvantaged by the asymmetry of section 11323 of the Interstate Commerce Act, which prohibits their direct control of motor carriers but which does not prohibit motor carriers from acquiring direct control of freight forwarders.

Recent developments in the transportation industry have had a number of adverse implications for the freight forwarders. There is especially heavy competitive pressure for less-than-truckload traffic, the forwarders' mainstay, resulting in both traffic erosion and rate depression for the forwarders. As one indication, the trend in forwarders' transportation purchases from the railroads is falling well behind that of their closest counterparts, the shippers' associations. For the United States as a whole, freight forwarder total carloads dropped by about 75 percent since 1978.

To the extent that the forwarders' loss of traffic results from regulatory restrictions on their right to perform economically viable services, both equity and efficiency considerations dictate that the roadblocks imposed by regulation should be promptly eliminated. The U.S. Department of Transportation strongly supports S. 1124 for a number of reasons.

First, it is consistent with and advances the goal of relying on market forces whenever feasible to promote competition and efficiency. Second, it advances equity and efficiency by providing forwarders with the flexibility to compete with brokers, shippers' agents, and shippers' associations on an equal basis. Third, it puts forwarders on an even footing with truckers when vertically integrated motor carrier-forwarder operations are more efficient than contracting out the line-haul transport of freight. Fourth, it provides freedom to contract with shippers regarding price and service characteristics. Lastly, it removes antitrust immunity for freight forwarder collective ratemaking, which forwarders no longer need nor want. We understand that the freight forwarders' rate bureau was disbanded at this time about a year ago.

There are several changes we would recommend to S. 1124, Mr. Chairman. First, we would include brokers of freight in the reform

package. While there are relatively few regulatory restrictions on brokers compared to freight forwarders, if they wish to be different it should be by preference, not by law.

Second, we would include household goods forwarders in the bill. We believe they also should be deregulated, and that their claim they cannot be deregulated until the household goods motor carriers they use are deregulated is unpersuasive.

Third, we believe that it is no longer necessary to continue to subject these carriers to the Carmack provisions for carrier liability. We believe that this provision is a vestige of a regulatory system that is outdated, and that Federal regulation by the Interstate Commerce Commission over this area is no longer needed. Today, carrier liability is covered at the State level by the provisions of the Uniform Commercial Code; hence, the need for federally mandated uniformity seems outdated.

Now is the time to move ahead with S. 1124. In addition, we would urge the committee to take up the very important and related issue of further trucking deregulation.

Mr. Chairman, that concludes my prepared remarks. I would be pleased to answer any questions you or other members of the subcommittee may have.

Mr. ANDERSON. Thank you, Mr. Haseltine, for your presentation.

In your statement you suggest three changes. They are, first, deregulate brokers; second, deregulate household goods forwarders; and, third, eliminate the Carmack provisions. Now, will the administration support S. 1124 without these changes?

Mr. HASELTINE. Absolutely. Yes.

Mr. ANDERSON. They will support it without them?

Mr. HASELTINE. Right.

Mr. ANDERSON. Now, the bill retains limited ICC authority to require freight forwarders to post a bond or other security in order to protect shippers with respect to lost or damaged cargo. Do you believe the retention of this authority to be necessary?

Mr. HASELTINE. We don't think it is necessary but we don't think that it is a critical enough point, certainly not to oppose the bill. We think that the marketplace can probably work in this area and that it is not a necessary provision.

Mr. ANDERSON. Mr. Shuster.

Mr. SHUSTER. I have no questions, Mr. Chairman.

I appreciate your testimony, Mr. Haseltine.

Mr. ANDERSON. Mr. Lightfoot.

Mr. LIGHTFOOT. I have no questions, Mr. Chairman.

Mr. ANDERSON. Then thank you very much, Mr. Haseltine.

Mr. HASELTINE. Thank you, Mr. Chairman.

[Mr. Haseltine's prepared statement follows:]

STATEMENT OF PHILIP HASELTINE, DEPUTY ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, U.S. DEPARTMENT OF TRANSPORTATION, REGARDING FREIGHT FORWARDER DEREGULATION

Mr. Chairman and Members of the Committee, thank you for inviting me here today to discuss the Department of Transportation's views regarding freight forwarder deregulation.

FREIGHT FORWARDER REGULATION IS OUTDATED

Although the Motor Carrier Act of 1980 (MCA) has provided significant new operational freedoms and reduced regulatory burdens for common and contract motor carriers, most of these benefits have yet to be provided to freight forwarders. It has been over forty years since the basic framework of freight forwarder regulation was devised. The regulatory framework of 1942 is ill-suited to the transportation realities of 1986. Strict freight forwarder regulation is particularly anomalous in an era of transportation deregulation and its concomitant market changes. Freight forwarder deregulation is dictated by equity considerations as well as by the principles of economic efficiency.

We believe that the regulatory changes proposed by S. 1124 are especially worthy of support. It is very similar to our bill submitted to Congress in September 1985, but not yet introduced.

FREIGHT FORWARDERS AND THEIR COMPETITORS

Who are the members of this "forgotten segment" of trucking, and how do they compare with other segments of the surface transportation industry? In many ways, forwarders are similar to shipper's associations and brokers. Like the former, they consolidate shipments in order to take advantage of truckload rates; like the latter, they bring shippers and carriers together and help meet the informational needs of smaller shippers. However unlike either, forwarders are common carriers and, as such, are subject to more stringent regulation than either shippers' associations or brokers.

There are also many similarities between less-than-truckload (LTL) motor carriers and freight forwarders, both of whom consolidate LTL shipments into truckload lots. Like LTL common carriers, freight forwarders have benefited from easier entry policies. Also like motor common carriers, forwarders must publish and file their tariffs with the Interstate Commerce Commission (ICC). However, unlike their motor common carrier counterparts, they cannot hold "dual operating authority" and also serve as contract carriers exempt from tariff filing requirements. In addition, a freight forwarder is not permitted to provide the line-haul transportation for its shipments but, rather, must purchase this transportation from motor carriers or railroads.

The freight forwarder, as we know it today, is substantially a product of regulation—the regulation of over forty years ago. We strongly believe that the time to modernize that regulation has come and that it is time to offer to freight forwarders the same flexibilities and freedoms that are now enjoyed by other segments of the transportation industry against whom they compete.

Forwarders have no economic characteristics warranting regulation for efficiency reasons, such as substantial fixed costs and scale economies. Fixed assets and shareholder's equity for even the largest freight forwarders averaged only slightly over one million dollars in 1978. The only historical basis for their regulation was to provide consistency with regulations of other freight modes—railroads, trucks, and barges—at the time the controls were instituted with the Freight Forwarder Act of 1942. Furthermore, forwarders must now compete on inequitable terms with other types of rapidly expanding third parties—shippers' associations, shippers' agents, and property brokers—which are virtually unregulated. These entities are variously referred to as third parties, intermediaries, and middlemen. The terms are thus used interchangeably in this statement.

CHANGES IN TRANSPORTATION MARKETS SINCE 1980

In 1980, enactment of the MCA and the Staggers Rail Act (SRA) provided substantial deregulation of the motor carrier and railroad industries and resulted in a number of critical changes in the provision of transportation services. In the trucking industry, the freer entry brought about by the MCA has resulted in entry by new carriers, expansion into new markets by existing carriers, and greater price competition. This effect was intensified by the softening of demand and the resulting buyers' market associated with the general economic slowdown of the early 1980's. These developments have been further associated with greater pricing volatility, a dampening of inflationary rate increases, and some absolute LTL rate reductions. For example, a study conducted by Thomas G. Moore, now with the Council of Economic Advisors, found an average reduction of about 15 percent in LTL rates since the MCA.

An additional development associated with freer entry is a weakening of the rather rigid segmentation that has traditionally characterized some parts of the

transportation industry's structure. This change is particularly noticeable in trucking, where the previously sharp distinctions between common and contract carriage, for-hire and private operations, and regulated and exempt services are rapidly fading. Reduced regulations has exerted a similar influence on the functional distinctions among the various types of middlemen.

Another important post-1980 development is the rapid expansion of contracting between carriers—both rail and motor carriers—and individual shippers, relative to traditional common carriage. Such contracting involves individual negotiations of rates and service conditions, such as the degree of liability which the carrier assumes. This change has also produced a new emphasis on large volume movements, since greater committed tonnage yields shippers more favorable contractual terms regarding prices and service.

IMPACTS ON FREIGHT FORWARDERS

These developments have a number of adverse implications for the freight forwarders. There is especially heavy competitive pressure for less-than-truckload traffic, the forwarders' mainstay, resulting in both traffic erosion and rate depression. The effect of new entry and expansion by existing motor carriers has already been mentioned. Additional pressure may also be traced to the increased competition provided by trailer-on-flatcar (TOFC) service for truckload (TL) traffic.

TOFC service has grown rapidly since it was exempted from regulation by the Interstate Commerce Commission (ICC), pursuant to the provisions of the SRA. Increased competition for TL traffic has forced many regular route general commodity truckers to become more dependent on LTL traffic. The greater emphasis placed on LTL traffic by such carriers has cut further into the forwarders' market share and intensified rate discounting, resulting in many LTL charges which are below 1980 levels. In addition, property brokers are beginning to compete for the small shipment traffic of the forwarders and are likely to increase their share of this traffic. Forwarders are also hampered by restricted opportunities to gain from the increased emphasis on volume traffic associated with the proliferation of contract rates.

The new emphasis on volume rates enhances the importance of intermediaries, who can often consolidate shipments into volumes larger than those typically shipped by even relatively large shippers. The third-party role is also enhanced by the proliferation of price and service options, which complicates the ability of individual firms to keep up with developments. One result of contracting and it emphasis on volume shipments is the proliferation of unregulated property brokers and shippers' agents as direct competitors of the forwarders for this traffic. As an associated disability, forwarder opportunities to benefit from the new approaches are limited by the regulatory prohibition against forwarders' contracting with either LTL or volume shippers.

Many forwarders are also disadvantaged by the asymmetry of section 11323 of the Interstate Commerce Act which prohibits their direct control of motor carriers, but does not prohibit motor carriers from acquiring direct control of freight forwarders. This anomaly limits the potential benefits of vertical integration, thus also limiting the cost savings that could be passed on to shippers and consumers. In the absence of regulatory barriers, the distinctions between forwarders and LTL trucking firms could be expected to be much less than at the present time. A basic similarity between the two types of operations is seen in the crucial character of the assembly and distribution functions which they each perform, with the ownership status of the vehicle being quite incidental to the sophisticated operations involved. Vertical integration between motor carriers and forwarders has thus been freely available to motor carriers but not to forwarders. In fact, a 1978 DOT study indicated that at least 20 of the 54 Class A general commodity freight forwarders (representing about 40 percent of the tonnage shipped) were controlled by motor carriers. In today's highly competitive environment, there is no sound policy reason to preclude forwarders from seeking the same types of benefits from integration that are available to motor carriers.

In view of the market changes that have occurred since 1980 and the special restrictions on the forwarders' ability to respond positively to them, forwarders might be expected to lag in development behind the transport industry generally. There is some confirming evidence. As one indication, the trend in their transportation purchases from the railroads is falling well behind that of their closest counterparts, the shippers' associations. For the United States as a whole, freight forwarder total carloads dropped by about seventy-five percent since 1978, from 242,000 to 67,000.

WHY DOT SUPPORTS FREIGHT FORWARDER DEREGULATION

It should be emphasized that the proposed deregulation is not designed as an economic relief measure, and it may fail to serve that purpose. But to the extent that the forwarders' disabilities are the result of regulatory restrictions on their right to perform economically viable services, both equity and efficiency considerations dictate that the roadblocks imposed by regulation should be promptly eliminated. In order to promote both efficiency and equity objectives, forwarders must have equal flexibility in dealing with their competitors, their line-haul carriers, and their shippers.

The explicit purpose of S. 1124 is to ensure the competitiveness and efficiency of surface freight forwarder services, which the bill asserts would be fostered by the termination of the remaining ICC responsibilities for the regulation of these operators.

The proposed legislation explicitly eliminates all statutory requirements on freight forwarders of general commodities. It thus sweeps away any artificial restraints on their ability to adapt to the market changes induced by the 1980 legislation.

In conclusion, the U.S. Department of Transportation strongly supports S. 1124 for a number of reasons:

1. It is consistent with and advances the goal of relying on market forces whenever feasible to promote competition and efficiency;

2. It advances equity and efficiency by providing forwarders with the flexibility to compete with brokers, shippers' agents, and shippers' associations on an equal basis;

3. It puts forwarders on an even footing with truckers when vertically integrated motor carrier-forwarder operations are more efficient than contracting out for the line-haul transport of freight.

4. It provides freedom to contract with shippers regarding price and service characteristics, including, for example, the degree of liability assumed;

5. It provides forwarders with the necessary flexibility to perform efficiently in transportation markets, fitting in where, how, and to the extent their performance permits. Any continuing special financial hardship experienced by forwarders would then be a reflection of economic viability and not of artifical institutional constraints;

6. It removes antitrust immunity for freight forwarder collective ratemaking, which forwarders no longer need or want. We understand that the freight forwarders' rate bureau was disbanded at this time one year ago.

There are several changes we would recommend to S. 1124, Mr. Chairman. First, we would include brokers of freight in the reform package. While there are relatively few regulatory restrictions on brokers, compared to freight forwarders, we believe such close competitors should be able to thrive on their own merits, on the basis of what service they do offer, not what service they are allowed to offer.

Second, we would include household goods forwarders in this bill. We believe they should also be deregulated, and their claim that they cannot be deregulated until the household goods motor carriers they use are deregulated is unpersuasive. Brokers are already largely unregulated, and they have no trouble using either regulated or unregulated carriers for regulated and exempt commodities, respectively.

Third, we believe that it is no longer necessary to continue to subject these carriers to the ICC's "Carmack" provisions for carrier liability. We believe that this provision is a vestige of a regulatory system that is outdated and that ICC jurisdiction over this area is no longer needed. Today, carrier liability is covered at the state level by the provisions of the Uniform Commercial Code, which has been adopted by 49 States (all but Louisiana). Hence, the need for federally mandated uniformity seems outdated.

Now is the time to move ahead with S. 1124 and, in addition, we would urge the Committee to take up the very important and related issue of further trucking deregulation.

Mr. Chairman, that concludes my prepared remarks. I would now be glad to answer any questions you or other Members of this Committee might have.

Mr. ANDERSON. Our next witness is the Chairman of the Interstate Commerce Commission, Heather Gradison.

Heather, we are very pleased to have you here today.

Ms. GRADISON. Good morning. It's good to be here.

Mr. ANDERSON. We have your prepared statement. It will be included in the record in its entirety. You can proceed any way you wish.

TESTIMONY OF HON. HEATHER J. GRADISON, CHAIRMAN, INTERSTATE COMMERCE COMMISSION, ACCOMPANIED BY JOHN HENNIGAN, CHIEF OF POLICY

Ms. GRADISON. Thank you. I would like to summarize my remarks briefly and, in addition, introduce the gentleman on my left, John Hennigan, who is currently the Chief of Policy at the ICC. We appreciate the opportunity to be with you this morning.

S. 1124, the Surface Freight Forwarder Deregulation Act of 1985—I guess you'll have to change that—is designed to remove Commission jurisdiction over most activities of the surface freight forwarding industry. We believe the bill accomplishes this result. With the exception of household goods freight forwarders, which are excluded from the benefits of the bill, S. 1124 ensures that surface freight forwarders will be able to provide competitive and efficient transportation for the present and in the future.

Existing statutory provisions are outdated and constitute cumbersome impediments to the promotion of efficient and competitive freight forwarder service. These protective provisions inhibit the ability of freight forwarders—including household goods freight forwarders—to meet the demands of the marketplace, and are counterproductive in terms of achieving the goals of the national transportation policy. They restrict the range of price and service options available to the shipping public, result in inefficient use of equipment, and limit the growth of intermodal transportation.

While the Commission has reduced the burdens faced by surface freight forwarders, existing controls and limitations have prevented the Commission from adopting a regulatory approach that would enhance, to the maximum extent possible, competition and efficiency within the surface forwarding industry. The proposed legislation should help achieve more competitive pricing and increase service options available to shippers by removing from Title 49 of the United States Code existing regulatory controls over general commodity surface freight forwarders.

The proposed legislation also makes other changes related to the removal of general jurisdiction to ensure, among other things, that no controls are placed on most freight forwarder rates; that general commodity freight forwarders are not immune from antitrust provisions; that general commodity freight forwarders are not limited in their operations to the use of certain types of carriers; and, last, that general commodity freight forwarders are not precluded from owning other modes of transportation. The bill will not, however, affect the underlying law with respect to regulation of interstate commerce.

The proposed changes, as well as others contained in the bill, should enable most surface freight forwarders to operate in an unfettered manner, responsive to the forces of the marketplace, and to be held accountable to the shipping public through the State and Federal court systems.

The Commission would, however, prefer to see these advantages extended to the freight forwarder segment of the household goods industry. There is no persuasive reason to treat household goods forwarders differently from other forwarders.

Beyond this, we generally support the bill's provisions regarding freight forwarder liability, including retention of the Carmack amendment provisions of 49 U.S.C. 11707. We see no need to retain the provision that authorizes the Commission, at its discretion, to require all freight forwarders to file evidence of cargo insurance. In the absence of a demonstrated need for economic regulation in terms of licensing general commodity freight forwarders, imposing general reporting requirements, or enforcing the specific powers, it is doubtful that the Commission would need to or could ensure that all forwarders meet any filing requirements which we might impose.

Thank you, Mr. Chairman.

Mr. ANDERSON. Thank you, Ms. Gradison.

Ms. Gradison, later today witnesses will testify in support of retaining regulation for household goods freight forwarders. I know that you would prefer elimination of regulations for all freight forwarders, including household goods freight forwarders. Will retention of the regulations impose any administrative or regulatory problems for the ICC?

Ms. GRADISON. No, sir, it shouldn't. It shouldn't. We would prefer to see a level playing field for all freight forwarders, so we think it is to the household goods freight forwarder's advantage to go ahead and have the deregulation as well, but it won't create a burden on the Interstate Commerce Commission, no.

Mr. ANDERSON. Well, could you tell the subcommittee how many freight forwarders are now regulated by the ICC, and could you give us a breakdown of how many are general commodity freight forwarders and how many are household goods freight forwarders?

Ms. GRADISON. Let me ask John Hennigan, who is our chief of policy and more familiar with the numbers of this, to respond to your question, please.

Mr. ANDERSON. Mr. Hennigan.

Mr. HENNIGAN. Mr. Anderson, we provided a listing of freight forwarders for the committee. The computer listing shows that there are 624 freight forwarders currently certificated by the Interstate Commerce Commission. We do not have the ability, on this printout at least, to break down the number of general commodity freight forwarders versus the freight forwarders of household goods.

Included within this number are series of freight forwarders that have most of their business in air freight forwarding and have incidental operations in surface freight forwarding. Looking at testimony last year on household goods freight forwarders, it appeared as if there were about 70 or 80 freight forwarders of household goods. We can try to break this down for you, but it was never kept in our computer as a distinction between general commodities and household goods freight forwarders, so the distinction isn't there.

Mr. ANDERSON. Now, Ms. Gradison, apparently you do not favor retention of the freight forwarder's obligation to file evidence of cargo insurance. You seem to indicate that it would be difficult to

enforce. Why do you not favor retention of this requirement, and why will it be so difficult to enforce?

Ms. GRADISON. Well, if they are not required to register with us to begin with, then a requirement for an insurance application would be difficult to enforce because we wouldn't know whom we were asking to file proof of insurance.

However, my biggest concern is that if we go ahead and eliminate the requirement, it will be more of a buyer beware situation in which there is no umbrella held out that pretends that we are reviewing the insurance, and those who are using the freight forwarder services will find it not only in their interest but will make certain that they meet their obligation to make certain that the freight forwarder's insurance is in place. It is just a matter of making certain that those who use those services recognize that they have the responsibility, and it seems to make more sense that they be encouraged to use that, that they be encouraged to make certain that it is there.

Mr. ANDERSON. Ms. Gradison, if this bill is enacted into law, would freight forwarders be able to continue to enter into transportation contracts with other modes of transportation?

Ms. GRADISON. Yes, sir. There would be no prohibition on that.

Mr. ANDERSON. Mr. Shuster.

Mr. SHUSTER. No questions, Mr. Chairman. Thank you.

Mr. ANDERSON. Mr. Moody.

Mr. MOODY. Thank you, Mr. Chairman.

Ms. Gradison, it has come to my attention that the household goods major van lines have what appears to me to be a very pernicious relationship with their agents, in the sense that an agent, having spent years to build up the business in his area, is severely limited on what he can do. He must move goods, even business that he generates individually, in trucks bearing the logo of the major national company and he has to pay them a commission, and it is very difficult for him to get out from under that very unequal relationship. I don't have it exactly phrased correctly, but I think you are probably aware of what I am talking about.

What would you propose, if in fact there is a very unbalanced relationship and if the agents have little or no options because of the uniformity in policy? You can't really jump from Plymouth to North American. You are almost stuck. It is a form of vertical monopoly in a sense. What do you propose as a way to handle that problem? It has to be handled now.

Ms. GRADISON. Well, the courts have upheld this holding of a name, and the simplest solution would be for that local carrier to take on a new name and no longer use that national logo, but the courts have upheld it and short of——

Mr. MOODY. Are you talking about a recent decision?

Ms. GRADISON. Yes, sir.

Mr. MOODY. Yes, which may or may not be appealed, of course.

Ms. GRADISON. It has been upheld in the court of appeals.

Mr. MOODY. Therefore, are you saying that you are in agreement with the court decision, that you think they have the freedom to do this?

Ms. GRADISON. Let me ask John to answer this.

Mr. HENNIGAN. Mr. Moody, I can't speak to the legal merits of the particular case. It was an Atlas Van Lines case. The Commission——

Mr. MOODY. Atlas, was that the case in question? Atlas?

Mr. HENNIGAN. There was a recent one involving this very issue, and I can't speak to the merits of it but prior to that the Commission did take the position that the name, the national name of the van lines, had certain meaning, and that a local van line had certain—I mean, that the national van line could protect its property rights, if nothing else, by entering into an agreement with the agent that limits the agent in some specified way. Without characterizing that as the full case, the court I think upheld the right of the national van line to——

Mr. MOODY. For example, if an agent takes his truck from my hometown to, Austin, TX, in the national van, let's say Atlas Van Lines. Then on the way back he may have business that he has generated totally independently. He still has to pay Atlas a fee, even though Atlas had nothing whatsoever to do with generating that business, just to use an example. You see, because of the empty backhaul problem——

Mr. HENNIGAN. That is part of the problem that you are suggesting. That was not necessarily a part of the issue that the Commission was looking at. I don't know how the agent would be bound on the backhaul. The original issue was that it could have parallel authority, and it could more or less get the referral but use its own name.

Mr. MOODY. I guess what I am asking is, has the Commission wrestled at all with this issue or have the courts been the arena for action here? Have you struggled at all with this issue?

Ms. GRADISON. We have struggled with it. The courts have been an arena and it looks as though they will be a continuing arena. I don't know of any cases that we have before us at this time. I may go back to my office and find we have some that haven't percolated up to the Commission level.

However, it is something that is a franchise. It is a given name, and the van lines seem to be within their rights to protect their names, and for uses of that van line name beyond it, it is in that individual carrier's interest to perhaps decide whether or not he wants to maintain that tie with the umbrella organization.

Mr. MOODY. OK, thanks.

Thank you, Mr. Chairman.

Mr. SHUSTER. No questions, Mr. Chairman.

Mr. ANDERSON. Mr. Lightfoot.

Mr. LIGHTFOOT. No questions, Mr. Chairman.

Mr. ANDERSON. Mr. Packard.

Mr. PACKARD. No, thank you. No questions.

Mr. ANDERSON. Mr. DeLay.

Mr. DELAY. No questions, Mr. Chairman.

Mr. ANDERSON. Very good. Well, thank you, Ms. Gradison and Mr. Hennigan, for your presentation.

[Hon. Heather J. Gradison's prepared statement follows:]

STATEMENT OF HEATHER J. GRADISON, INTERSTATE COMMERCE COMMISSION, ON S. 1124

Mr. Chairman and Members of the Subcommittee: Thank you for this opportunity to appear before this Subcommittee and submit the Commission's views on the issue of deregulation of surface freight forwarders.

S. 1124, the "Surface Freight Forwarder Deregulation Act of 1985," is designed to remove Commission jurisdiction over most activities of the surface freight forwarding industry. We believe the bill accomplishes this result. With the exception of household goods freight forwarders, which are excluded from the benefits of the bill, S. 1124 ensures that surface freight forwarders will be able to provide competitive and efficient transportation for the present and in the future.

Existing statutory provisions are outdated and constitute cumbersome impediments to the promotion of efficient and competitive freight forwarder service. These protective provisions inhibit the ability of freight forwarders (including household goods freight forwarders) to meet the demands of the marketplace and are counterproductive in terms of achieving the goals of the National Transportation Policy. They restrict the range of price and service options available to the shipping public, result in the inefficient use of equipment, and limit the growth of intermodal transportation.

Since passage of the Motor Carrier Act, the Commission has attempted to reduce the burdens faced by surface freight forwarders in competing with other carrier modes. In 1981, we authorized independent affiliates of surface freight forwarders to provide exempt consolidated services under 49 U.S.C. 10562(4).[1] In 1982, the Commission interpreted provisions of the Staggers Rail Act of 1980 to allow freight forwarders to enter into rail contracts.[2] Also in 1982, we promulgated a revision of our rules to allow freight forwarders to take advantage of the restriction removal procedures.[3] Since 1982, the Commission has continued to opt for increased competition in the marketplace in granting broad grants of general commodity authority to surface freight forwarders. In 1984, the Commission adopted rules to reduce the notice period for independently filed rates of motor common carriers and freight forwarders. Rate reductions and new rates may become effective on 1 day's notice, and rate increases may become effective on 7 workday's notice.[4] The Commission also allowed the Freight Forwarders Tariff Bureau to publish a rule that would provided for the averaging of rates without specifically publishing the actual applicable rates in the tariff.[5]

The above-mentioned activities have increased the flexibility of freight forwarder participation in the transportation industry. However, existing entry-exit controls, rate regulation, limitations on permissible control relationships between freight forwarders and other carriers, and court intervention, among other factors, have prevented the Commission from adopting a regulatory approach that would enhance, to the maximum extent possible, competition and efficiency within the surface forwarding industry.

The proposed legislation should help achieve more competitive pricing and increase service options available to shippers by removing from Title 49 of the United States Code existing regulatory controls over general commodity surface freight forwarders. S. 1124 would accomplish this primarily by removing the Commission's general jurisdiction over these forwarders by amending 49 U.S.C. 10521(a) and 10561. The proposed legislation also makes other changes related to the removal of general jurisdiction to ensure, among other things, that: (1) no controls are placed on most freight forwarder rates; (2) general commodity freight forwarders are not immune from antitrust provisions; (3) general commodity freight forwarders are not limited in their operations to the use of certain types of carriers; and (4) general commodity freight forwarders are not precluded from owning other modes of transportation.

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[1] Ex Parte No. 380, "Status of Carrier-Affiliated Shippers' Agents," 365 I.C.C. 32 (1981).

[2] Ex Parte No. 387, "Railroad Transportation Contracts," 367 I.C.C. 9 (1982).

[3] Ex Parte No. MC-142 (Sub-No. 2), "Freight Forwarder Restrictions," 132 M.C.C. 832 (1982), remanded to the Commission in *"Global Van Lines, Inc."* v. *I.C.C.*, 714 F. 2d 1290 (5th Cir. 1983). The Commission is currently considering a further notice of proposed rulemaking to allow freight forwarder restriction removal procedures.

[4] Ex Parte No. MC-170, "Short Notice Effectiveness for Independently Filed Motor Carrier and Freight Forwarder Rates," 1 I.C.C. 2d 146 (1984), affirmed in *Southern Motor Carriers Rate Conference, et. al.* v. *United States of America and Interstate Commerce Commission*, U.S.C.A., 11th Cir., No. 84-8499, October 18, 1985.

[5] No. 39928, "Freight Forwarder Tariff Bureau, Inc.—Average Rates—Petition to Reject," served Feb. 27, 1985.

These proposed changes, as well as others contained in the bill, should enable most surface freight forwarders to operate in an unfettered manner, responsive to the forces of the marketplace, and to be held accountable to the shipping public through the State and Federal court systems. It will allow these forwarders to adapt to present and future transportation needs and marketplace realities. The Commission supports these goals and the proposed legislation.

However, the Commission would prefer to see these advantages extended to all segments of the forwarding industry. The current bill will continue outdated regulation of household goods freight forwarders, apparently to ensure that they are not competitively disadvantaged with respect to other segments of the household goods transportation industry that are still regulated, and to protect the public.[6] In this regard, we note that general freight motor common and contract carriers are regulated, but general commodity freight forwarders do not seek continued regulation for competitive purposes. There is no persuasive reason to treat household goods forwarders differently from other forwarders.

Beyond this, we generally support the bill's provisions regarding freight forwarder liability, including retention of the Carmack Amendment provisions of 49 U.S.C. 11707. However, we see no need to retain the provision that authorizes the Commission, at its discretion, to require all freight forwarders to file evidence of cargo insurance. In the absence of a demonstrated need for economic regulation in terms of licensing general commodity freight forwarders, imposing general reporting requirements, or enforcing the specific powers, it is doubtful that the Commission would need to or could ensure that all forwarders meet any filing requirements we might impose.

Separate views of Chairman Gradison and Commissioner Andre: On a purely economic basis, there is no real need to retain the cargo liability requirements of the Carmack Amendment. The liability issue can be agreed upon on an individual basis in the same manner that other terms of shipment are negotiated.

Vice Chairman Simmons, commenting: Various considerations may or may not support inclusion of household goods freight forwarders in the bill. The majority performs no meaningful analysis of these considerations, and I thus see no reason to take issue with the conclusion reached by the Senate on this matter.

I also believe that the provisions granting the Commission discretionary authority to require insurance filings is in the public interest.

Commissioner Lamboley, commenting: In the absence of closer analysis, the continued regulation of household goods freight forwarders remains an open question.

Additionally, I support the bill's provision authorizing the Commission to require all freight forwarders to file evidence of cargo insurance.

Mr. ANDERSON. At this time we will stand in recess, go cast our vote, and be back promptly and try to get going within 15 minutes.

[Recess taken.]

Mr. ANDERSON. The meeting of the subcommittee will come to order.

Our next witness is William J. Augello, executive director and general counsel of the Shippers National Freight Claim Council, Inc.

Mr. Augello, we do have your prepared statement. It will be made a matter of the record in its entirety. The floor is yours.

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[6] The bill would continue the current practice of I.C.C. regulation of household goods freight forwarders. Although existing law (49 U.S.C. § 10562(2)(D)) exempts these forwarders of used household goods from regulation, I.C.C. decisions in the late 1960's narrowed the definition of "used household goods" to not include unaccompanied baggage and used automobiles. Once the definition was sufficiently narrowed, the Commission was able to claim jurisdiction, as these forwarders were carrying both exempt and non-exempt commodities.

Since the goal of the current bill is to deregulate all general freight forwarding operations, there would be no basis under law for continued regulation of household goods freight forwarders. However, by defining "household goods freight forwarder" as a forwarder of one or more of the following commodities: household goods, unaccompanied baggage or used automobiles in Section 4 of the bill and eliminating the existing exemption from regulation of freight forwarders of used household goods, the bill effectively extends regulation to this industry.

TESTIMONY OF WILLIAM J. AUGELLO, EXECUTIVE DIRECTOR AND GENERAL COUNSEL, SHIPPERS NATIONAL FREIGHT CLAIM COUNCIL, INC., ACCOMPANIED BY ROBERT E. REDDING, DIRECTOR OF FEDERAL AFFAIRS

Mr. AUGELLO. Thank you, Mr. Chairman. I would like to introduce Mr. Robert Redding, our director of Federal affairs.

Mr. Chairman, I will summarize my statement, but I would like to save a little time to comment on the positions taken by the DOT and the ICC on liability issues.

As you know, we are strongly in support of S. 1124 because it retains the Carmack amendment, and I might add that it is with the concurrence of the freight forwarder industry. Both groups, our group and the freight forwarders, support the retention of the ICC's insurance regulations as well, because it is an appropriate and least intrusive method of protecting the public from underfinanced or "fly-by-night" forwarders.

S. 1124 also retains the statute of limitations for bringing actions for freight charges on freight forwarder shipments. However, it mysteriously reduces the time limit within which a shipper may file an overcharge claim against a freight forwarder from 3 years to 2 years. There simply is no justification for treating the time limits for bringing actions by shippers against freight forwarders differently than the time limit that exists for freight forwarders to sue shippers for freight charges. The present law is 3 years for both sides, and we cannot understand how the 2-year reduction appeared in S. 1124.

There are several modifications in S. 1124 that we strongly urge the House to adopt. The primary modification is that we must have the public policy established by the Supreme Court on released rates codified. The reason is, if we are going to exempt forwarders from the ICC's jurisdiction, we need a forum for shippers to contest unlawful attempts to limit freight forwarders' liability. The solution is to simply adopt the language that the Supreme Court has used when permitting carriers to negotiate released rates. The Supreme Court stated the carriers may, ". . . by a fair, open, just and reasonable agreement limit the amount recoverable by a shipper in case of loss or damage to an agreed value made for the purpose of obtaining the lower of two or more rates and charges proportioned to the amount of the risk. . . ."

I will explain how this really works. At the present time and in the past the Commission has judged the reasonableness of released rates. Congress has discontinued that protection, and now shippers must wait until they are injured by an unlawful release and then file a lawsuit at great expense, hoping that the court will enforce this mysterious public policy. By codifying this provision, it will act as a preventive measure. Freight forwarders will see that in the statute and not attempt to limit their liability unlawfully.

There are two modifications to that public policy that we strongly urge. One is the prohibition of "automatic releases." An "automatic release" is one in which the shipper does nothing, and yet the carrier's liability will be limited to, say, 50 cents a pound or whatever provision the forwarder inserts in its tariff. As you well know, in this deregulatory climate shippers barely see tariffs any

longer and they are not aware of these "automatic releases" until they have a loss. Then they discover that the carrier has inserted one in his tariff. Therefore, we simply seek, in addition to the codification language that I read to you earlier, that such limitations may not provide for "automatic releases" of forwarders' liability without an affirmative, written consent of the shipper on the bill of lading.

The other modification that I would like to have is the prohibition of "deductibles." Deductibles were approved by Congress in the Staggers Act but only for railroads. The ICC gratuitously, and we believe unlawfully, extended the privilege of publishing deductibles in released rates to all other modes of surface transportation.

The plain fact is that the motor carrier industry today, the general commodity carriers, do not use deductibles. Freight forwarders have not used deductibles. The reason is that as soon as carrier employees who handle our freight see that there is a provision in the bill of lading whereby the first $100 or $200 or $300 of a loss cannot be claimed, they will be induced to steal our freight. Once that inducement spreads throughout the distribution cycle, it is going to cause havoc with our entire distribution system. Therefore, we ask that the codification be amended to specifically prohibit deductibles for freight forwarders.

The insurance and statutory agents issue is explained at length in my testimony. In addressing that issue, I would like to also comment on the DOT and the ICC's position. First of all, I would like the Committee to know that the insurance requirements that Congress inserted in the Interstate Commerce Act and the regulations enacted by the ICC pursuant thereto are the most beneficial regulations that have ever been enacted and enforced by the Commission.

All you have to do is to take a look at the number of motor carrier bankruptcies during 1985. There were 1,500 motor carrier bankruptcies reported by Dun & Bradstreet. When a certified motor carrier files for bankruptcy the shippers can look to the carrier's cargo insurance that was filed with the Commission for reimbursement of their losses, and if those provisions that should be retained for freight forwarders if they are deregulated.

The mandatory cargo insurance regulation is an inducement to deal with certified carriers, knowing full well that there is an insurance policy which guarantees payment for up to $5,000 per vehicle in the event the carrier is liable. If the carrier goes bankrupt, the insurance company must pay that claim without exclusions and without deductibles. That is part of the regulations. It is very valuable and I cannot see dealing with freight forwarders without that protection.

There is one void that we found in the present statute, and we ask that it be rectified in this bill. That is, require freight forwarders to designate an agent for the service of process in each State through which they operate, the same as motor carriers. This regulation is urgently needed for freight forwarders as well.

The DOT took a position that Carmack liability is not needed for freight forwarders because we have the UCC. The Uniform Commercial Code is not the solution to carrier liability problems or a replacement for the Carmack amendment. The Uniform Commer-

cial Code merely says that carriers may limit their liability with reasonable terms. There is absolutely no uniformity.

We have uniformity today. We have very good provisions in the Carmack amendment. For instance, we have a uniform time limit for filing claims. Without the Carmack amendment, we would be susceptible to having a freight forwarder's time limits in all 48 States judged in a different manner. Some States could find that the 2-year limit is reasonable. Others would find that 3 years is reasonable or that 1 year would be reasonable.

We cannot have a nationwide transportation system without uniformity of liability provisions. The joint and several liability provisions in Carmack are also essential. Without that, we would have to be suing each connecting carrier across the country. That is the reason why the Carmack amendment was enacted 60 years ago.

I believe that concludes my testimony, Mr. Chairman. I would be happy to answer any questions that you may have.

Mr. ANDERSON. Yes; thank you, Mr. Augello, for your presentation. You have partly answered my first concern. Earlier today the administration recommended the deletion of the Carmack provisions for carrier liability. They stated that carrier liability is covered at the State level by the provisions of the Uniform Commercial Code, which has been adopted by 49 States. Hence, they feel the need for federally mandated uniformity seems outdated.

Now, you apparently disagree with this statement. You have told us why. In elaborating on this, could you also tell us why you think the administration has taken their position?

Mr. AUGELLO. I simply feel that it is their concentration on deregulation. The basic problem that we have is that they are overlooking the fact that liability is governed by the law of bailments. It is not an economic law. Liability should never have been drawn into the deregulation battle because it is bad to change such a fundamental law. Common carriers are bailees just like parking lots and laundries, and if we start tinkering with the legal obligation of bailees to protect our goods, it could very well spread into all other forms of bailments. It should be excluded completely from the deregulatory reform involvement.

Mr. ANDERSON. Now in your testimony you state your position that freight forwarders be required to designate an agent for the service of process in each State in which they operate. Will you tell us why you feel this is necessary?

Mr. AUGELLO. Simply to facilitate the institution of a suit against a freight forwarder for any reason. It could be for an overcharge; it could be for an injury, an accident. The ICC has a computer system whereby the agents for motor carriers in every State through which they pass must be designated and on file with the Commission. If you have a suit against a carrier and you are running close to the statute of limitations, and you don't know how to serve that carrier out in Iowa somewhere, you simply go to the Commission, find out the name of the agent in that State, and serve that agent. It is a great help to shippers in administering their claims and suits. I simply don't know why freight forwarders were excluded from this statute originally.

Mr. ANDERSON. Basically, the shipping groups support deregulation on the basis that it will have competitive benefits, which in-

clude marketplace controls on price and service. Why cannot marketplace controls suffice in the area of claims? For example, couldn't a shipper refuse to utilize the service of a carrier that does not demonstrate that it can pay for any loss or damage to the shipper's goods?

Mr. AUGELLO. That is too late. You see, claims are after the fact. Carriers simply do not solicit freight by talking about their claims and their claims record. Claims are caused by negligence. They don't use that approach in their sales talk. They are selling rates and service.

We have seen the results in the past 5 or 6 years of deregulating the airlines and the railroads. The result has been adverse to the shipping public and consumers, because the carriers have used that new freedom to unlawfully limit their liability by inserting exculpatory clauses in their contracts which shippers rarely see—their circulars, their exempt circulars. Deregulation has had adverse effects on liability for loss or damage.

Another thing is that carriers have been free to change their time limits for filing loss and damage claims, for filing overcharge claims. You have to take a look at the record. The railroads and the airlines have just about every possible combination of short time limits that you can imagine. It has been chaotic for the administration of claims. We used to have a uniform limit, so that your claims department would know exactly how much time they had to file a timely claim. Now you have to know what carrier you used before you determine that, and you find very frequently that the time limit has expired because you weren't aware of that short time limit.

Therefore, deregulation simply has not worked to the shipping public's advantage on liability issues. We have lost uniformity; we have lost reasonableness.

Mr. ANDERSON. Mr. Packard.

Mr. PACKARD. Thank you, Mr. Chairman.

You mentioned that joint, strict, and several liability, the "deep pocket" principle, ought to remain. Why is that important to your industry? What would limitations such as those found in California's proposition 51 do to your industry?

Mr. AUGELLO. Yes, I am familiar with that, Congressman. Proposition 51 amends the tort law to limit joint and several liability. In transportation, we are talking about a transportation contract. When you are dealing with a motor carrier in New York and they are delivering freight to California, more than likely that freight is going to be handled by a number of carriers en route.

Therefore, Congress way back in the twenties decided that it would be more reasonable to hold either the origin carrier or the destination carrier liable for the negligent acts of any of the connecting carriers. It is a matter of contract, not tort law. That is the simple explanation as to why joint and several liability is necessary for transportation contracts governing interstate commerce. Previous to the Carmack amendment, a shipper would have to institute a claim or a suit against each connecting carrier until you discovered who the next carrier was, you see, which would be unduly burdensome on the shipping public.

Mr. PACKARD. It would be unduly burdensome, perhaps, but there is a fairness issue. Does it open up the liability of companies to the extent that they would be required to carry some burden which they would not be responsible for?

Mr. AUGELLO. That is a good question, but it is a matter of contract and these connecting carriers all have interline agreements between them which provide that if the origin or the destination carrier is required to pay for the loss, it has the right to proceed against the negligent carrier and to seek reimbursement. They also have insurance for that purpose, you see, but in a tort situation you don't have that contractual relationship.

Mr. PACKARD. Does the "joint, strict and several" liability, though, carry over into the tort aspects of your carriers?

Mr. AUGELLO. Does it, did you say?

Mr. PACKARD. Would it? Yes, does it?

Mr. AUGELLO. No, that would be done by tort law.

Mr. PACKARD. Doesn't the Uniform Commercial Code control law regulating bailment and, if so, how could deregulation here affect other bailment law, especially as it regards liability?

Mr. AUGELLO. I think it would establish a dangerous precedent. That's all. The 48 States or 49 States that have the Uniform Commercial Code, for instance, do not set a uniform time limit for filing claims. It merely says that time limits may be reasonable.

Mr. PACKARD. That is all I have, Mr. Chairman.

Mr. ANDERSON. Thank you, Mr. Packard.

Thank you, Mr. Augello and Mr. Redding, for your presentation.

Mr. AUGELLO. Thank you, Mr. Chairman.

[Mr. Augello's prepared statement follows:]

STATEMENT OF WILLIAM J. AUGELLO, EXECUTOR DIRECTOR/GENERAL COUNSEL, SHIPPERS NATIONAL FREIGHT CLAIM COUNCIL, INC., ON S. 1124, DEREGULATION OF THE FREIGHT FORWARDING INDUSTRY

My name is William J. Augello, and I am submitting this statement as the Executive Director/ General Counsel of the Shippers National Freight Claim Council, Inc. The Council is a non-profit trade association consisting of over 750 members, principally shippers and receivers, but also including carriers, forwarders, intermediaries and insurers. The primary purpose of this Council, which has been in existence since 1974 is to improve freight claim practices and procedures as well as rules, regulations and statutes governing carrier liability. The Council also is dedicated to the prevention of loss and damage in transit.

RETENTION OF THE CARMACK AMENDMENT

The Council supports the liability retention provisions of S. 1124, having testified in support of those provisions before the Senate Commerce Committee on May 17, 1985. (See Senate Hearings 99-81, pp. 42-49 and 51-52.) The Council takes no position on the deregulation of the freight forwarder industry in other respects as the Council's by-laws restricts its activities to carrier liability issues.

S. 1124 retains carrier liability for deregulated freight forwarders by subjecting them to the provisions of 49 U.S.C. §§ 10730 and 11707, commonly known as the Carmack Amendment. The retention of the Carmack Amendment was inserted in the final bill at this Council's request with strong support from other shipper organizations, and, more significantly, with the concurrence of the freight forwarder industry. Both groups also supported the retention of the I.C.C.'s insurance regulations as "an appropriate and least intrusive method of protecting the public from under-financed or 'fly-by-night' forwarders." See testimony of Lawrence Berman (Senate Hearings 99-81 pp. 32 and 38-39.)

It is interesting to note in this connection that the Carmack Amendment was also retained by Congress in the deregulation of the railroad industry in 1980, and similar provisions are included in Senator Packwood's and Congressman Moody's pro-

posed legislation to deregulate the trucking industry, all with strong shipper support.

S. 1124 also retains the statute of limitations for bringing actions for freight charges on freight forwarder shipments. However, it reduces to two years the time within which a shipper may file an overcharge claim against a freight forwarder. The Council supports all of the foregoing provisions of the bill, except the reduction in the time limit for filing overcharge claims. The Council also urges adoption of several modifications to the Senate version of this bill, as will be explained herein. In addition to the Council's support of the principles stated herein, we wish to call to the Committee's attention the fact that most of these principles have been endorsed by "The Carmack Alliance", an informal group of 16 shipper trade associations which have endorsed liability standards embraced in the Carmack Amendment and other related liability issues. A list of "The Carmack Alliance" is annexed hereto as Appendix A. A list of the liability objectives endorsed by the members of the Carmack Alliance is annexed as Appendix B.

SECTION 10730—LIMITATIONS OF LIABILITY

S. 1124 continues to subject freight forwarders to the provisions of § 10730(a) which merely states that the Commission may require or authorize a carrier (including a freight forwarder) to establish rates for the transportation of property under which the liability of the carrier for that property is limited to a value established by written declaration of the shipper, or by a written agreement, when that value would be reasonable under the circumstances surrounding the transportation.

Stated differently, this section merely provides that a freight forwarder may offer release rates to its shippers. However, the I.C.C. would no longer have jurisdiction over such released rates and therefore, could not judge whether or not the differential between the normal full value rate and the released rate would be reasonable.

In the absence of I.C.C. jurisdiction, shippers would have to resort to expensive litigation in order to have an unreasonable, prohibitive differential between such rates found to be unlawful.

The solution, in a deregulatory climate, is to codify the present common law rules regarding a common carrier's limitations of liability. The landmark case setting forth the public policy of the United States on this issue is *Adams Express Co.* v. *Croninger*, 226 U.S. 491 in which the Supreme Court held that a carrier may ". . . by a fair, open, just and reasonable agreement limit the amount recoverable by a shipper in case of loss or damage to an agreed value made for the purpose of obtaining the lower of two or more rates and charges proportioned to the amount of the risk. . . ."

In the absence of I.C.C. jurisdiction, shippers would be deprived of a convenient forum for the prohibition of released rates which violate this public policy. They would be required to wait until they had been injured by the loss or damage to their goods in transit and have their claims denied before they could seek redress in court. The claim would then have to be litigated to determine whether or not the forwarder's released rate met the Supreme Court's standard for a lawful alternative rate.

In the absence of I.C.C. jurisdiction over released rates, Congress should add a provision to § 10730 which would codify the Supreme Court's public policy statement, thus giving shippers an effective statutory tool with which to prevent forwarders from publishing unlawful released rate options. This could be readily accomplished by adding sub-section (d) to 49 U.S.C. § 10730 as follows:

"(d) Freight forwarders may, by a fair, open, just and reasonable agreement limit the amount recoverable by a shipper in case of loss or damage to an agreed value made for the purpose of obtaining the lower of two or more rates and charges proportioned to the amount of the risks in transit."

An additional sentence should also be added to prohibit automatic releases and deductibles, as will be explained in the following portions of our statement.

AUTOMATIC RELEASES

The codification of released rates provisions being retained for freight forwarders must also be amended to prohibit the publication of "automatic releases". This term has been chosen by the I.C.C. to describe a device traditionally used by some carriers in an attempt to limit their liability without the shippers' knowledge. This is accomplished by publishing a rule which provides that unless the shipper declares a higher value on the bill of lading at the time shipping, the carrier's liability will be limited to a specific amount such as $.50 per pound or some other nominal amounts. See Ex Parte No. 98 (Sub 2) Released Rate-Small Shipments Traffic, 361 I.C.C. 404,

415–417; and Transconex, Inc.—General Commodities, Inc., Released Rate Decision No. FF-305, October 21, 1982. Such devices have been prohibited by the I.C.C. in the past and the federal courts are beginning to hold that such automatic releases are unenforceable. *G.E. & I.N.A.* v. *McLean Trucking Co.*, (No. 85–417–A, E.D.Va. 1985); *Co-op Shippers* v. *Santa Fe*, 613 F.Supp. 788 (N.D.Ill. 1985).

In the Co-op Shippers decision, the Court held:

"The problem with [the contractual scheme offered by Santa Fe] is that it reverses the assumption of liability required by §§ 10730 and 11707. Santa Fe is offering full liability rates, but only as an alternative to otherwise applicable released rates. The automatic nature of Santa Fe's limitation of liability is precisely the 'trap for the unwary' that the ICC has refused to allow by requiring carriers to obtain a deliberate release from the shippers . . ."

Similarly, the I.C.C. has confirmed that automatic releases are prohibited in tariffs filed with it, stating:

"The shipper who deliberately signs for released rates is less likely to release the value by mistake than is the shipper whose shipments are subject to released value unless he or she indicates full liability is desired. An accidental release of value could be catastrophic, whereas higher full value rates may be more easily absorbed." *Released Rates in Conjunction With a Small Shipments Tariff*, 361 I.C.C. 405, 416 (1979).

Thus, such a released rate violates § 10730's mandate that the limitation of the carrier's liability be evidenced by a "written agreement".

For this reason Congress must preserve the prohibition against automatic releases by inserting, in the new sub-paragraph (d) requested above, an additional sentence reading "Such limitations may not provide for 'automatic releases' ".

The addition of this sentence will enable shippers to use this statutory prohibition in their negotiations with freight forwarders in the event they are confronted with attempts to publish automatic releases. If the freight forwarder thereafter elects to proceed with such a device for limiting its liability, the shippers may easily obtain relief in court based upon this statute. It will not be necessary to have an administrative agency (such as the I.C.C.) monitor or enforce this statute.

DEDUCTIBLES

As in the case of automatic releases, the Council urges that § 10730 be amended to prohibit the utilization of "deductibles" in freight forwarder rate options. This device to limit a carrier's liability was intended by Congress to be limited to railroad released rate options. See 49 U.S.C. § 10730(c) wherein Congress specifically allowed railroads to "provide in such written declaration or agreement for specified amounts to be deducted from any claim against the carrier for loss or damage to the property or for delay in the transportation of such property." This amendment to § 10730 was incorporated in the Staggers Rail Act of 1980 and limited to Section (c) which governs only railroads, in an effort to help the financially ailing railroad industry.

However, by administrative interpretation, the I.C.C. gratuitously extended the right to incorporate deductibles into motor carriers' and freight forwarders' released rate agreements, despite strong shipper opposition.

Deductibles have no place in a bailment contract. They are proper in insurance contracts where the owner of the goods retains possession of its goods that are being insured and can assume a certain portion of the risks because he retains control over those risks. In a contract of carriage situation, however, the owner of the goods relinquishes control of the goods to the carrier. Under the public policies governing common carriers, they may not contract against their negligence, except that § 10730 permits carriers to place a limit on their ability. A deductible acts as a floor on carrier liability and therefore permits common carriers to contract against their negligence up to the amount of the deductible.

The most serious objection that shippers have to deductibles in contracts of carriage is that they act as a "license to steal". Once a carrier's employee discovers from the bill of lading that the shipper has waived carrier liability for the first $200 of the value of the goods, there will be a great inducement for the employee's theft or pilferage of the shipment up to that amount. The deductible prohibits the filing of a claim, and, therefore, the employee would feel free to engage in these unlawful thefts without risk of apprehension or prosecution. Once this principle gains a foothold in the transportation industry, it will be extremely difficult to eradicate.

Perhaps this fear explains why general commodity carriers have reported that deductibles are not presently being used in common carrier rate tariffs today, despite

the I.C.C.'s unlawful extension of deductibles to the motor carrier and freight forwarder industries following its decision in 1983.

Accordingly the Council urges that § 10730 be amended to specifically prohibit the use of deductibles in freight forwarder released rate options.

In sum, S. 1124 should be amended by incorporating the three amendments suggested herein by adding sub-section (d) to 49 U.S.C. § 10730 as follows:

"(d) Freight forwarders may, by a fair, open, just and reasonable agreement limit the amount recoverable by a shipper in case of loss or damage to an agreed value made for the purpose of obtaining the lower of two or more rates and charges proportioned to the amount of the risks in transit. Such limitations may not provide for specific amounts to be deducted from any claim and may not provide for an 'automatic' release of the forwarders' liability without the affirmative written consent of the shipper."

STATUTE OF LIMITATION

S. 1124 proposes to retain the present statute of limitation provisions for freight forwarders provided in 49 U.S.C. § 11706. However, it is proposed to reduce the time limit for shippers to bring a civil action for overcharges against a freight forwarder from the present three year period to two years after the claim accrues. The Council opposes this unwarranted reduction in the statute of limitations for filing overcharges for several reasons.

Firstly, there is no similar reduction in the time limitation placed upon freight forwarders to bring an action against the shipper for freight charges. There is no justification for treating the time limits for shippers vis-a-vis forwarders differently.

Secondly, there is no justification for changing the present time period within which shippers may file for recovery of overcharges in freight charges. The only explanation for the one-year reduction contained in the Senate Report (Calendar No. 264 Report 99-120, p. 17) is that "the Committee understands the need for shippers to have a specified time within which they are able to bring claims against a freight forwarder. The Committee seeks to insure, however, that this period not become burdensome for general commodities freight forwarders and for that reason has reduced the time limitation for certain types of claims."

The Council respectfully submits that retaining the traditional three-year period for filing overcharge claims against forwarders, which is the same time frame within which freight forwarders may file undercharge claims against shippers, is not "burdensome". Furthermore, the statute of limitations for bringing such actions at one time was two years but was increased to three years by Congress in 1958 because the shipping community required more time within which to have their freight bills audited for errors. The statute has remained at a uniform three year period for overcharges and undercharges ever since. No valid reasons have been advanced for departing from this long-established three year time period, and we urge that this reduction in the traditional time limit be deleted from S. 1124.

INSURANCE AND STATUTORY AGENTS

The Council supports the provisions in S. 1124 for requiring freight forwarders to continue filing a bond or an insurance policy for shippers' protection against unrecoverable loss of or damage to freight. The present statutory requirements and the I.C.C.'s regulations in this regard have saved the shipping public millions of dollars of unrecoverable losses annually and must be preserved for freight forwarders, particularly in light of the unprecedented number of carrier bankruptcies being experienced following the deregulation of a transportation industry.

We note, however, a void in the existing laws and regulations in that freight forwarders are not required at present to designate an agent for the service of process in each state in which they operate. The I.C.C.'s regulations requiring designation of such agents applies only to motor carriers. (49 C.F.R. 1044) Apparently freight forwarders were not included in the statute requiring motor carriers to designate agents (49 U.S.C. § 10330) on the assumption that forwarders do not conduct over-the-road operations and therefore would not be sued in various states in which accidents or cargo losses occur. This assumption overlooks the fact that freight forwarders may be sued on loss and damage or overcharge and duplicate payment claims by shippers located anywhere in the United States. Such suits could be instituted in any state in which the plaintiff resides and in which the forwarder conducts operations. However, in view of the fact that forwarders utilize other carriers for their over-the-road operations, it is not necessary for forwarders to maintain physical facilities in each state in which they are authorized to operate. It is vital, therefore, that such forwarders designate an agent for the service of process in each state

through which they operate to facilitate the filing of suits against them. Having a list of such agents on file with a governmental agency's computer often saves a suit from being lost due to a statute of limitation expiring before service can be arranged at a distant carrier headquarters.

The Council urges, therefore, that 49 U.S.C. § 10330 be amended to include freight forwarders.

We appreciate the opportunity to present this statement to the Committee and urge that S. 1124 be passed by the House with the modifications requested herein.

APPENDIX A

THE CARMACK ALLIANCE—Supporters of Its Objectives—May 1986

Organization	Contact	Address	Telephone
American Institute for Shippers Associations, Inc..	Joseph Roberts, Counsel	1730 "M" St., NW, #501 Washington, DC 20036.	(202)296-2900
Drug & Toilet Preparation Traffic Conference.	Daniel J. Sweeney, Counsel	1750 Penn. Avenue, NW Washington, DC 20006.	(202)393-5710
Eastern Industrial Traffic League	Wm. P. Jackson, Jr., Executive Secretary.	P.O. Box 1240 Arlington, VA 22210.	(703)525-4050
Fibre Box Association	Thomas J. Muldoon, Executive Vice Pres.	5725 E. River Road Chicago, IL 60631.	(312)693-9600
National Assn. of Freight Transportation Consultants.	Donna Behme, Executive Director	P.O. Box 221 Brookville, MD 20833.	(301)924-3614
National Association of Manufacturers	Lawrence A. Fineran, Asso. Dir, Regulatory Reform & Transportation.	1776 "F" Street, NW Washington, DC 20006.	(202)637-3051
National Confectioners Traffic Conference.	William Sullivan, Whitman Chocolates.	9701 Roosevelt Blvd. Philadelphia, PA 19114.	(215)464-6000
National Industrial Transportation League.	James E. Bartley, Exec. Vice President.	1090 Vermont Ave., NW Washington, DC 20006.	(202)842-3870
National Retail Merchants Association	Beatrice Cohen, Dir. of Transportation.	100 West 31st Street New York, NY 10001.	(212)244-8780
National Small Shipments Traffic Conference.	Joseph F. Cutrona, Executive Director.	1750 Penn. Avenue, NW Washington, DC 20006.	(202)393-5505
Oil & Gas Well Supply Traffic Association.	Michael W. Durr	P.O. Box 1675 Houston, Texas 77060.	(713)939-2800
Rubber Manufacturers Assn.	Gloria E.M. Bartholomew, Staff Associate.	1400 "K" Street, NW Washington, DC 20005.	(202)682-4843
Shippers National Freight Claim Council, Inc.	William J. Augello, Exec. Dir/Gen. Counsel.	120 Main Street Huntington, NY 11743.	(516)549-8984
Southern Traffic League	Wm. P. Jackson, Jr., Executive Secretary.	P.O. Box 1240 Arlington, VA 22210.	(703)525-4050
United Fresh Fruits & Vegetables Association.	Claudia R. Fuquay Dir/ Congressional Rel.	727 N. Washington St. Alexandria, VA 23214.	(703)836-3410
Western Traffic Conference	Richard G. Cosky, President	9440 Sideview Drive San Francisco, CA 90240.	(415)764-3830

For further information, contact Robert E. Redding, SNFCC Director of Federal Affairs, 7315 Wisconsin Avenue, #325E, Bethesda, Maryland 20814; (301) 961-8984.

APPENDIX B

OBJECTIVES OF THE COALITION OF SHIPPER ORGANIZATIONS ON CARRIER LIABILITY

A. RETENTION OF EXISTING CARRIER LIABILITY STANDARDS

1. The Carmack Amendment (49 U.S.C. Sec. 10730 & Sec. 11707) should be retained to protect shippers, receivers and consumers against common carrier efforts to evade liability for loss, damage and delay in the transportation of the nation's commerce.

2. All Federal regulations relating to loss and damage claims (49 C.F.R. Part 1005) and overcharge claims (49 C.F.R. Part 1008) should be retained or codified.

3. Federal regulations relating to mandatory cargo and public liability and property damage insurance for motor carriers and freight forwarders (49 C.F.R. Parts 1043 and 1084) and designation of statutory agents for the service of process in states through which motor common carriers operate (49 C.F.R. Part 1044) should be retained, as well as a related central filing and information system maintained for the public.

4. (a) Federal regulation should be retained over all surface common carriers' liability rules;

(b) Federal regulation should be retained over those modes of surface common carriers which must presently obtain agency permission to offer released rates (freight forwarders, household goods carriers and bus lines);

(c) Existing regulatory standards for approving released rates should be enforced, i.e., there must be a conscious election by the shipper (no "automatic releases"), a wide range of values, a high susceptibility to loss or damage, and a high ratio of claims to freight changes and number of shipments; and

(d) Existing common law standards for released rates should be codified, requiring such rates to be fair, open, just and reasonable, and proportioned to the risks of transit.

B. NEEDED AREAS OF SHIPPER-RECEIVER-CONSUMER PROTECTION

5. Federal legislation should be enacted to prohibit released rate "deductibles" in motor common carrier, surface freight forwarder and household goods carriers' tariffs.

6. Federal legislation must be enacted to encourage arbitration of cargo loss, damage and delay claims by which successful claimants will recover attorney fees when a carrier fails to offer and arbitration program which is low cost, independently administered, and which requires adherence to the law of carrier liability.

7. Access to Federal District Courts must be restored to litigate loss, damage and delay claims valued at less than the present $10,000 minimum amount.

8. Federal legislation should be enacted to restore the legal right of claimants' to institute litigation against a railroad in any jurisdiction in which that railroad is doing business.

9. Strict enforcement should be maintained of statutory and regulatory provisions governing common carrier public liability, property damage and cargo insurance, statutory agents, liability rules and related regulations vital to the protection of shippers, receivers and consumers.

10. The Interstate Commerce Commission should modify the exemptions granted to certain categories of rail traffic (boxcar, TOFC/COFE, fresh and frozen foods, etc.) unless the unlawful limitations of liability and exculpatory clauses in their exempt circulars are removed. (See list of 14 provisions annexed hereto.)

11. The Interstate Commerce Commission should require that the general level of rates maintained by railroads be the full liability rates mandated by the Carmack Amendment. Railroads may, however, offer optional reduced rates on specific commodities which provide alternatives to Sec. 11707 provisions (not alternatives to common law standards of liability and burdens of proof, and not "automatic releases").

12. Federal legislation should be enacted to repeal that portion of Sec. 10505 which permitted exemptions from overcharge claim time limits (49 U.S.C. Sec. 11706).

13. Uniform and reasonable packaging specifications jointly prescribed by carriers with shipper input should be continued in the rail and motor carrier classifications, with existing anti-trust immunity.

C. NEEDED EXPANSION OF COMMON CARRIER LIABILITY

14. The Carmack Amendment should be amended to cover all surface movements of exempt commodities and exempt transportation by rail and motor carriers, unless otherwise agreed to in a written bilateral contract between shipper and carrier.

15. Federal legislation should restore reasonable and uniform domestic airline/air freight forwarder cargo liability regulation and published liability rules.

16. Federal legislation should be enacted to broaden mandatory cargo insurance requirements (including the "BMC 32 Endorsement") to include domestic air, rail and water common carriers.

17. The 1978 Hamburg Rules should be ratified by Congress to replace the Carriage of Goods By Sea Act (46 U.S.C. Sec. 1300).

Mr. ANDERSON. Our next witness is Mr. James K. Leach, the manager of transportation of J.C. Penney Co., Inc., and representing the National Industrial Transportation League.

Mr. Leach, we do have your prepared statement. It will be made a matter of record in its entirety. Please proceed.

TESTIMONY OF JAMES K. LEACH, MANAGER OF TRANSPORTATION, J.C. PENNEY CO., INC., ON BEHALF OF THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

Mr. LEACH. Thank you, Chairman Anderson and members of the subcommittee. I appreciate the opportunity to enter our testimony today.

I am manager of transportation for the J.C. Penney Co., Inc., New York, NY. I am appearing today on behalf of the National Industrial Transportation League. I serve as chairman of the organization's small shipment transportation committee.

The league is pleased to be here this morning to present the shipping community's views on the deregulation of the surface freight forwarder industry. We believe that your hearings focus much-needed attention on the need to change the regulatory structure currently governing the surface freight forwarder industry.

The league has long supported reducing the Federal economic regulation of our national transportation system to the minimum consistent with the public interest. In helping to secure enactment of the Staggers Rail Act, the 1980 Motor Carrier Act, and the 1984 Shipping Act, the league has sought to let the marketplace resume its rightful role as a regulator of the transportation service. Where the marketplace has not been sufficiently strong enough to assume this role, our goal has been twofold: First, to foster the competitive forces so that it can do so; and, second, to provide a balanced regulatory system until this former goal can be achieved.

Due to the changes made by these laws, we believe that now is an appropriate time to review the economic regulation governing surface freight forwarders to assure that they have the necessary tools to meet today's more competitive transportation marketplace.

The league supports the goals and objectives of S. 1124, the Surface Freight Forwarder Deregulation Act of 1985.

We believe that the measure is consistent with our policies on entry and antitrust immunity. We supported the passage of S. 1124 when it was considered last year by the Senate. We respectfully request that your subcommittee give expedited consideration to the measure and seek prompt consideration by the House.

In closing, we believe that S. 1124 eliminates unnecessary Federal economic regulation in the surface freight forwarders industry, and should be enacted into law. We look forward to working with you and your staff to assure that the legislation meets our mutual goal of a market-disciplined national transportation system.

I also would like to indicate that the American Retail Federation and the Western Traffic Conference also endorse this legislation.

We thank you for the opportunity to present the views of the shipping community. I will be pleased to answer any questions you may have.

Mr. ANDERSON. Mr. Leach, you have pretty well answered my first question but I want to have you make your position perfectly clear. You said the league supports the goals of S. 1124. Do you support S. 1124 in its present language as passed by the Senate?

Mr. LEACH. Yes, we do.

Mr. ANDERSON. If there are amendments, you might change your mind, but——

Mr. LEACH. If there are amendments, we will be glad to work with the subcommittee.

Mr. ANDERSON. OK. Mr. Leach, what effect do you believe this legislation will have on shippers? In other words, do you foresee any benefits to shippers resulting from the enactment of this legislation?

Mr. LEACH. Yes, sir. We believe that the legislation would assist the shipping community by eliminating those regulatory constraints which prevent the freight forwarder industry from pricing its services as effectively as its competitors.

Mr. ANDERSON. Mr. Packard.

Mr. PACKARD. I have no questions, Mr. Chairman. Thank you.

Mr. ANDERSON. Thank you Mr. Leach, for your presentation.

Mr. LEACH. Thank you, sir.

[Mr. Leach's prepared statement follows:]

TESTIMONY ON BEHALF OF THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE ON S. 1124, SURFACE FREIGHT FORWARDER DEREGULATION ACT OF 1985, JUNE 18, 1986

Chairman Anderson, members of the subcommittee: My name is James K. Leach. I am manager of transportation for J.C. Penny Company, Inc., New York, New York. I am appearing today on behalf of the National Industrial Transportation League, and serve as chairman of the organization's Small Shipments Transportation Committee. I also would like to indicate that the American Retail Federation and the Western Traffic Conference also endorse this legislation.

The league is a voluntary organization of shippers, shippers' associations, boards of trade, chambers of commerce, and users of freight transportation services. It is the only nationwide organization representing shippers of all sizes and commodities using all modes of transportation to move their goods in interstate and international commerce. Its members, directly or indirectly, are responsible for the routing of about 80 percent of the country's commercial freight.

The League is pleased to be here this morning to present the shipping community's views on the deregulation of the surface freight forwarder industry. We believe that your hearing focuses much needed attention on the need to change the regulatory structure currently governing the surface freight forwarder industry.

The League has long supported reducing the federal economic regulation of our national transportation system to the minimum consistent with the public interest. In helping to secure enactment of the Staggers Rail Act, the 1980 Motor Carrier Act, and the 1984 Shipping Act, the League has sought to let the marketplace resume its rightful role as the regulator of transportation services. Where the marketplace has not been sufficiently strong to assume this role, our goals have been two-fold—to foster the competitive forces so that it can do so; and, to provide a balanced regulatory system until this former goal can be achieved.

Due to the changes made by these laws, we believe that now is an appropriate time to review the economic regulations governing surface freight forwarders to assure that they have the necessary tools to meet today's more competitive transportation marketplace.

The League supports the goals and objectives of S. 1124, Surface Freight Forwarder Deregulation Act of 1985. We believe that the measure is consistent with our policies on entry and antitrust immunity.

We supported passage of S. 1124 when it was considered last year by the Senate. We respectfully request that your subcommittee give expedited consideration to the measure, and seek prompt consideration by the full House.

In closing, we believe that S. 1124 eliminates unnecessary federal economic regulation from the surface freight forwarder industry, and should be enacted into law.

We look forward to working with you and your staff to assure that the legislation meets our mutual goal of a market disciplined national transportation system.

We thank you for the opportunity to present the views of the shipping community. I would be glad to answer any questions you may have.

Mr. ANDERSON. Our next witness is Francis H. Watson, director, Drug and Toilet Preparation Traffic Conference, and the executive officer for the National Small Shipments Traffic Conference.

Mr. Watson, we do have your prepared statement. It will be made a matter of the record. You may proceed any way you wish, and we would also hope that you would introduce your colleague.

TESTIMONY OF FRANCIS H. WATSON, DIRECTOR, DRUG AND TOILET PREPARATION TRAFFIC CONFERENCE, AND EXECUTIVE OFFICER, NATIONAL SMALL SHIPMENTS TRAFFIC CONFERENCE; ACCOMPANIED BY DANIEL J. SWEENEY, ESQ., COUNSEL

Mr. WATSON. Thank you, Mr. Chairman and members of the subcommittee, for allowing us to testify here today on behalf of the two organizations I am representing. Before I begin, I would like to introduce Mr. Daniel J. Sweeney, who is the attorney for both organizations.

As I said, my name is Frank Watson. I am General Transportation Manager of Sterling Drug, Inc., which is headquartered in New York City. I am appearing here today in my capacity as a member of the executive committee of the National Small Shipments Traffic Conference and as a director of the Drug and Toilet Preparation Traffic Conference.

Both NASSTRAC and the Drug Conference members tender substantial volumes of shipments to the freight forwarder industry throughout the United States, and these conferences testified in support of the deregulation bill, S. 1124, before the Senate Commerce Committee.

The purpose of S. 1124 is to accomplish the economic deregulation of the surface freight forwarder industry. We agree with that objective and support it.

Traditionally the freight forwarder has been an important vehicle for the smaller shipper to accomplish its distribution on an economical and efficient basis. Furthermore, the savings accomplished by lower rates, through the forwarder's combining shipments into larger volume shipments, are particularly beneficial to the smaller shippers by making them competitive with larger companies. Therefore, by deregulating freight forwarders and giving them added rate flexibility, this bill should benefit all shippers.

Furthermore, in view of the recent deregulation of trailer-on-flatcar and much boxcar traffic, as well as the extreme leeway for ratesetting which has been extended by the Interstate Commerce Commission to the motor carrier industry, it is evident that this boost from deregulation is necessary for the freight forwarder industry to compete with these industries on a somewhat equal footing.

The bill is designed to take the freight forwarders completely out of the Interstate Commerce Act. However, there are some provisions of that act which provide protection to the shippers outside of economic regulation. Therefore, our conferences have supported

the retention in the bill of the current allocation of legal responsibilities between the freight forwarders and their shipper customers in the important areas of freight loss and damage and overcharge claims.

Recent experience with the TOFC exemption showed a very swift reaction by the railroads in moving to cut back on their common law liability, sharply curtailing from the statutory period for filing claims when they perceived that they had been exempted from such requirements. The present Interstate Commerce Act provides in section 11707 for all carriers, including forwarders, that they shall issue a bill of lading for the property received and be liable for the actual loss or damage caused by a carrier en route. It further provides that a carrier may not unilaterally limit its liability.

This bill quite properly maintains the requirement for a freight forwarder to provide a receipt or a bill of lading for the freight received from the shipper, and it also retains the statutory requirement that the freight forwarder pay for loss and damage.

A qualified exception to full liability is currently provided for freight forwarders in the current law under section 10730(a), whereby a freight forwarder can establish a rate under which the liability is limited to a value stated in writing by the shipper. It further provides that the value be reasonable under the circumstances surrounding the shipment, thereby ruling out tariff items which would zero out the carrier's liability or set deductibles from prospective recovery. Again, S. 1124 retains that provision for the future, and we support that.

I would like to deviate a little bit from my prepared text by noting some comments made here today, as they had to do with deductibles. The present statute offers no specific authority for deductibles, but our experience has shown us that the ICC has allowed deductibles, so we feel that the bill should be amended to prevent this deductible or from allowing the freight forwarders to have deductibles in the bill or through the bill.

Finally, section 11706 of the Interstate Commerce Act presently provides a statute of limitations allowing shippers 3 years within which to file for overcharges by freight forwarders and other carriers. Similarly, the carriers and the forwarders now have 3 years within which to file civil actions for undercharges. S. 1124 would retain the 3-year statute of limitation for freight forwarders but anomalously provides for only 2 years for shippers to recover overcharges. This appears to have been an oversight in the Senate.

In sum, these conferences which I am representing here today support the adoption of S. 1124 by the House.

We will accept any questions, Mr. Chairman.

Mr. ANDERSON. Thank you, Mr. Watson, for your presentation.

Mr. SWEENEY. Excuse me, Mr. Chairman. Could I add a response to the question that has been asked three or four times this morning, having to do with the necessity for having in the law a retention of the so-called Carmack amendment, full liability for loss or damage. The origin of the full liability——

Mr. ANDERSON. Now did we get your name for the clerk?

Mr. SWEENEY. I am Dan Sweeney. The origin of the full liability concept goes back to the 1600's, an old English court decision which held that a common carrier is responsible for the full loss and

damage of freight in transit. This is because if you take a shipment that is remote from your home location and it is in the hands of the carrier, it is only appropriate that the carrier should be responsible for the loss and damage, except for acts of God and things like that.

As the law moved through the 19th century, Federal courts in the United States adopted the same English rule and held the common carriers liable for full loss and damage. At the beginning of the 20th century there started to be some inconsistencies with the State courts. If someone brought a case in a State court, they might lose a case that they would win if brought in Federal court. Therefore, in 1912 I believe it was, Congress enacted the Carmark amendment to make it a uniform statutory law, codifying the principle which the courts had already evolved through common law. They put that, as a matter of convenience, into the Interstate Commerce Act.

The ICC has not had loss and damage jurisdiction. They have never awarded a dollar of loss or damage recovery to anybody, and what the shippers are asking here is that Congress retain the provision in the statute which says that a common carrier or a freight forwarder shall be liable for the full loss and damage en route.

Now the alternative, as I would see it, is that if Congress did not do that, it could be read as a signal that Congress is abandoning the common law rule, so that the shippers would no longer have the benefit of the traditional common law rule. By withdrawing the statute, it could be interpreted by the courts as meaning that Congress no longer wants carriers to be liable, and the shippers in effect would be in a worse position than they were prior to the original enactment of this law.

I think this is really what we are concerned about. There are already cases out there in various courts, trying to decide what Congress meant when they withdrew and revoked certain laws. This could be another one of those kind of problems if Congress were to revoke the full liability statute.

Thank you.

Mr. ANDERSON. Thank you, Mr. Sweeney.

Mr. Watson, in your testimony you state that you support retention of the 3-year statute of limitations for freight forwarders but you believe the 2-year limitation for shippers to cover overcharges was an oversight in the Senate. Did they feel it was an oversight in the Senate? In other words, was there clarification of this issue as to the Senate.

Mr. WATSON. I am not aware of any. Mr. Augello, in the prior testimony, also expressed wonderment as to how this happened. We don't understand why it was reduced from 3 years to 2 years.

Mr. ANDERSON. Therefore, no one has asked the Senate——

Mr. WATSON. Apparently it was 3 years, and nobody knows why it was reduced.

Mr. ANDERSON. No one has asked the Senators why they did that?

Mr. WATSON. I am not aware that anyone has.

Mr. ANDERSON. We don't know what the reason might have been?

Mr. WATSON. I am not aware of that.

I would like to, if I may, answer a question you asked of a previous shipper witness.

Mr. ANDERSON. Sure.

Mr. WATSON. Maybe it was Mr. Augello. It had to do with why not let the marketplace take care of this liability situation. One of the major reasons why the marketplace is not a good forum for that, is that even though shippers—and I can speak for the company I work for, while we control a lot of the traffic we move, there is much of it we don't control.

What I mean by that is, many products that our company buys from vendors, even though we may wind up paying the freight, the carrier that is utilized is not designated by us and we may wind up with a claim on an inbound shipment in which we had nothing to say about the carrier that was used bringing it in. We could find ourselves at a serious disadvantage in filing a claim, since a deal may have been made by the shipper or our vendor, yet we are responsible for the freight and its losses.

Another thing has to do with the fact that even on outbound shipments, where we have numerous plants and distribution centers and warehouses, while we endeavor to control much of what we ship out, there are many, many shipments that just go without our knowledge. I mean, my company alone uses well over 1,000 carriers. There is a person in my department who probably controls about 150 to 200 of those 1,000 carriers, so for that reason alone there are many, many movements that shippers make in which they would be caught up in the end in a claim situation which they had no control over. I would like the record to reflect that, sir.

Mr. ANDERSON. Mr. Packard.

Mr. PACKARD. Thank you, Mr. Chairman.

Regarding the "joint, strict, and several" liability laws, does England still carry the same laws? Have they not rescinded the "deep pocket" laws there?

Mr. SWEENEY. Who are you asking about? Who has withdrawn it?

Mr. PACKARD. England. Does Britain still have them? Do you know?

Mr. SWEENEY. I am not aware of that specifically. Of course, with a forwarder, I mean, the forwarder would take responsibility from origin to destination. It would seem in the case of a forwarder, either with or without the "joint and several" liability, there is only one company involved, so the company would be liable whether the loss took place in New York, Arizona, or out in California.

Mr. PACKARD. I can understand that.

Mr. SWEENEY. But I can't answer that English question because I don't have any knowledge of it.

Mr. PACKARD. OK.

Thank you, Mr. Chairman.

Mr. ANDERSON. Thank you very much, Mr. Watson and Mr. Sweeney, for your presentation.

[Mr. Watson's prepared statement follows:]

TESTIMONY FOR NATIONAL SMALL SHIPMENTS TRAFFIC CONFERENCE AND DRUG AND TOILET PREPARATION TRAFFIC CONFERENCE

My name is Francis H. Watson and I am General Transportation Manager of Sterling Drug Company with offices at 90 Park Avenue, New York, NY 10016. I am appearing today in my capacity as a member of the Executive Committee of the National Small Shipments Traffic Conference, Inc. (NASSTRAC) and as a Director of the Drug and Toilet Preparation Traffic Conference, Inc. (D&TPTC).

NASSTRAC consists of over 250 shipper members whose primary focus is on less-than-truckload (LTL) shipments, as they are predominantly LTL shippers. They are general commodities shippers shipping a wide variety of goods in packages.

D&TPTC consists of companies which are leaders in the manufacture and distribution of drugs, medicines, toilet preparations, and related items. The nature of their shipments is predominantly LTL and includes millions of shipments annually to receivers such as drug stores, hospitals, etc.

Both NASSTRAC's and D&TPTC's members tender substantial volumes of shipments to the freight forwarder industry throughout the United States and these Conferences testified in support of the deregulation bill (S. 1124) before the Senate Commerce Committee.

SUPPORT FOR THE BILL

The purpose of S. 1124 is to accomplish the economic deregulation of the surface freight forwarder industry. We agree with that objective and support it.

Traditionally, the freight forwarder has been an important vehicle for the smaller shipper to accomplish its distribution on an economical and efficient basis. Furthermore, the savings accomplished by lower rates, through the forwarder's combining shipments into larger volume shipments, are particularly beneficial to the smaller shippers by making them competitive with larger companies. Therefore, by deregulating freight forwarders and giving them added rate flexibility, this Bill should benefit all shippers.

Furthermore, in view of the recent deregulation of TOFC and much boxcar traffic, as well as the extreme leeway for ratesetting which has been extended by the Interstate Commerce Commission to the motor carrier industry, it is evident that this boost from deregulation is necessary for the freight forwarder industry to compete with these industries on a somewhat equal footing.

The Bill is designed to take the freight forwarders completely out of the Interstate Commerce Act. However, there are some provisions of that Act which provide protection to shippers outside of economic regulation. Therefore, our Conferences have supported the retention in the Bill of the current allocation of legal responsibilities between the freight forwarders and their shipper customers in the important areas of freight loss and damage and overcharge claims.

Recent experience with the TOFC exemption showed a very swift reaction by the railroads in moving to cut back on their common law liability and sharply curtailing from the statutory period for filing claims when they perceived that they had been "exempted" from such requirements. The present Interstate Commerce Act provides in Section 11707, for all carriers, including forwarders, that they shall issue a bill of lading for the property received and be liable for the actual loss or damage caused by a carrier enroute. It further provides that a carrier may not unilaterally limit its liability. This Bill quite properly maintains the requirement for a freight forwarder to provide a receipt or bill of lading for the freight received from the shipper. And it also retains the statutory requirement that the freight forwarder pay for loss and damage.

A qualified exception to full liability is currently provided for freight forwarders in the current law under Section 10730(a), whereby a forwarder can establish a rate under which the liability is limited to a value stated in writing by the shipper. It further provides that the value be reasonable under the circumstances surrounding the shipment, thereby ruling out tariff items which would zero out the carrier's liability or set deductibles from prospective recovery. Again, S. 1124 retains that provision for the future and we support that.

Finally, Section 11706 of the Interstate Commerce Act presently provides a statute of limitations allowing shippers 3 years within which to file for overcharges by freight forwarders and other carriers. Similarly, the carriers and forwarders now have 3 years within which to file civil actions for undercharges. S. 1124 would retain the 3 year-statute of limitations for freight forwarders but anomalously provides for only 2 years for shippers to recovery overcharges. This appears to have been an oversight in the Senate.

In sum, these Conferences are here to support the adoption of S. 1124 by the House.

Mr. ANDERSON. Our next witness is Mr. Owen Gleason, general counsel of the C.H. Robinson Co.

Mr. Gleason, we do have your prepared statement. It will be made a matter of the record in its entirety. You may proceed.

TESTIMONY OF OWEN GLEASON, ESQ., GENERAL COUNSEL, C.H. ROBINSON CO.

Mr. GLEASON. Thank you, Mr. Chairman.

My name is Owen Gleason. I am the general counsel of the C.H. Robinson Co. C.H. Robinson is an international produce and transportation company with about 46 branch offices throughout the United States and Canada, sales of over $700 million. We are completely employee owned and privately held. Not many people have heard of us. We have been in business since 1905.

I appreciate the opportunity to speak in favor of this bill to deregulate freight forwarders. C.H. Robinson Co. and its subsidiaries have been involved in both regulated and exempt transportation for over 30 years. We own an irregular route common and contract carrier and hold a property broker's license.

We have operated in the exempt sector for many years and are the originators of the freight contractor concept. We move well over 200,000 loads per year, anything from fresh produce to cotton, from powdered milk and animal feed to newspaper supplements and dried beans. We would like to provide shippers the same wide range of options in the regulated field as we do in exempt, but we are hampered by burdensome Government regulations and paperwork requirements.

In the exempt sector, we allow the market to set the rates and services that are desirable for ourselves, the carrier, and the shipper. We take complete responsibility for the shipment from the time we accept it until the time it is delivered. Carriers are paid promptly. Truckers who walk into any of our offices with their delivery receipts are paid immediately. We pay the truckers whether the shipper pays or not, and we pay justified claims even if the carrier does not. We offer to specifically tailor our services to a wide range of needs, including multiple pickup and delivery, sensitive time-dated material, and particular equipment requirements. We document our commitments responsibly and promptly.

We perform these functions not because any Government agency says we must. We do it because we know it is good business to do so. Because we are innovative, reliable, and flexible, our business has continued to grow.

The current regulatory structure makes it hard for us to operate in the regulated sector in the same efficient way we do in exempt, because we run the risk of being classified a freight forwarder. Consequently, we would be unable to guarantee shipper and carrier performance without being subjected to excessive rules and regulations that would increase our cost and render us uncompetitive.

We believe that if the bill before you passes, the market can begin to set not only rates but options for different types of services; that innovation would increase; that participants in the trans-

portation chain would become more flexible and more productive. Removing rigid barriers would allow us to tailor services to shipper needs; to lower costs by eliminating inefficiency and optimizing service.

While I don't believe it should affect passage of the bill as presently constituted, I would like to make three suggestions for its improvement.

One, in order to eliminate confusion and the potential for litigation, comprehensively deregulate all middlemen—brokers, shippers' agents, as well as forwarders. The entire issue is to let us all play on an even playing field.

Two, expand the available trucks that a freight forwarder may use by allowing the use of nonregulated carriers. This will expand the number of trucks available to haul shippers' loads and increase the overall efficiency of motor carriers.

Three, allow the market, in evolving rules. to set bill of lading and claims procedure requirements. Although there is some comfort in staying with the Carmack amendment because it is a known commodity, shippers and carriers ought to be free to negotiate varying claims procedures and agreements. Rigid rules on who should make the bill of lading or what it should contain are difficult for some middlemen to adhere to, as they are not always present to see that it is done properly. They should be free to use whatever form of documentation best suits the transportation arrangement.

In sum, Mr. Chairman, I fully support the proposal before you today, and I hope you go a few steps further and seriously consider my suggestions.

Mr. ANDERSON. Mr. Gleason, in your prepared statement you state that, and I quote:

> We trust you will make clear in the legislative language or report language that the deregulated freight forwarder can continue to make contract arrangements with both common and contract carriers.

Now at page 11 of the Senate report under section 4 reference is made to definitional changes in section 10102 which retain freight forwarders within the definition of "carrier"—contract carrier and common carrier. Explanatory language states that these changes are intended to ensure that freight forwarders continue to be able to enter into rate contracts with other transportation modes. My question is, is that language sufficient to meet your concerns?

Mr. GLEASON. Yes; I think it is, Mr. Chairman.

Mr. ANDERSON. Now, also in your prepared testimony you state that if the House completed action on this bill rapidly, the freight forwarding format would become more useful in the marketplace. My question is, how would it be more useful?

Mr. GLEASON. Well, I think that our concern is that at the moment we offer a number of options and types of services in exempt and as a broker which we cannot offer when we haul regulated freight. We would like to take end-to-end responsibility for the freight. This has been a very successful marketing technique for us. If we do that, however, we run the risk of being said to be a freight forwarder and not have the license.

I think that if freight forwarders were deregulated, it would expand the options for providing those services across the board.

Mr. ANDERSON. Any questions?

[No response.]

Mr. ANDERSON. Well, I guess that completes your presentation.

Mr. GLEASON. Thank you very much.

Mr. ANDERSON. We thank you very much.

[Mr. Gleason's prepared statement follows:]

TESTIMONY OF OWEN GLEASON, C.H. ROBINSON CO., CONCERNING FREIGHT FORWARDER DEREGULATION LEGISLATION

I am Owen Gleason, General Counsel of the C.H. Robinson Company.

In prior testimony in your truck transport "oversight" hearings of 1985, a representative of our company described the C.H. Robinson Company, expressed our satisfaction with the degree of economic deregulation of trucking which has occurred so far, and offered support for proposals to complete the economic deregulation of interstate trucking.

I will not repeat the description of the C.H. Robinson Company in detail. I will merely note that in our 46 branches spread over the United States and Canada we broker and distribute fresh fruits and vegetables, ship and pack agricultural commodities, import and export agricultural commodities, broker truck transportation of general commodities, and act as a carrier of general commodities. We are proud of the trust we have earned in the marketplace over the 80 years since 1905. That trust has made us the largest broker of freight transport in the nation, handling over 250,000 truckloads in 1985.

Robinson company has prospered in the nearly deregulated environment of the 1980's. Our brokerage operations in the "regulated" sector of trucking have grown rapidly. Every week and every month more shippers and receivers of general commodities learn of the services we offer and expand their use of those trucking related services. We now have over 45,000 trucks under contract in our brokerage operation.

Our attitude toward freight forwarder deregulation can be briefly summarized—we would prefer that you immediately completed the complete deregulation of both brokers and forwarders, and for that matter all trucking. If you can complete action on this bill rapidly, by all means do so and let the forwarding format become more useful in the marketplace right now.

We have a very few suggestions to make on improving this bill as it stands. I will touch on them briefly.

First, though, let me emphasize the need for immediate action. The existing regulation of freight forwarding, combined with some deregulation of trucking and brokering, has all but made the forwarder format unusable. We at Robinson have often considered becoming licensed as a forwarder. We certainly can qualify. We are fully capable of assuming complete origin to destination responsibility for freight, when we use underlying carriers. This is how we have been contracting transportation services in the "exempt" sector for many years. The multitude of regulations on the books for forwarders, including the tariff and public liability insurance requirements, would complicate our corporate structure, increase expense and force useless rigidities on us.

We have achieved success by meeting the market's requirements quickly, flexibly and efficiently. The excessive burden of trying to act as a statutorily defined forwarder, instead of a broker, outweighs the competitive advantages of the extra services we can offer. Indeed, gentlemen, the increasingly archaic statutory provisions relating to forwarders are largely responsible for limiting the capabilities of the few surviving forwarders of any size, and are responsibile for the perception among many traffic people that forwarding is obsolete.

If you were to clear away the regulatory underbrush, freight forwarding could become alive and vital once again. S. 1124 would go far to achieve this goal. With only a few modifications, it could do even more along those lines.

We have attached an analysis which may help simplify review of the measure, by grouping its provisions topically.

Now to our few suggestions for improvement.

First, we would really prefer that you completely deregulate forwarders and brokers, and let the market determine the distinctions between the two types of operations. If you do not do that now, you could eliminate the portion of Section 8 that

would leave the Interstate Commerce Commission authority to require filing of a bond or security for cargo costs with the Commission.

Let me make clear that Robinson has no difficulty with the minimal bonding requirements now required of brokers, or with guaranteeing cargo costs to shippers. We can provide financial security many multiples of that now required for brokers or forwarders. We would like to avoid any cost-increasing double insurance requirements. If a forwarder is using a carrier having its own insurance, the forwarder might wish to make its financial guarantee of cargo costs contingent upon failure of carrier payment. This form of primary-secondary security generally is more reasonable than double primary coverage. Alternatively, if the forwarder is taking the primary responsibility for cargo insurance, then the forwarder should be able to use any carrier it wishes, whether regulated by the Interstate Commerce Commission or not, and whether that carrier has its own cargo insurance or not.

Secondly, we trust you will make clear in the legislative language or report language that the deregulated freight forwarder can continue to make contract arrangements with both common and contract carriers. This is one useful capacity which forwarders now have. Deregulating forwarders but depriving them of this capacity would make little sense.

Thirdly, while we do not strongly object to the provisions of the bill requiring forwarders to issue bills of lading and maintaining the "Carmack amendment" provisions relating to forwarder responsibility, we also see them as unnecessary and burdensome. Robinson has learned to have great faith in the ability of the market to define the responsibilities of the service provider. If the shippers and receivers want us to issue a bill of lading, we will do it. If they want us to issue some other form of documentation specifying rights and liabilities, we will work out a sound commercial form which protects both them and us, and allows us to operate efficiently and profitably. We can live with the government telling us to use a bill of lading if we operate as a forwarder, but we really don't see the need.

Again, let me say that from Robinson's perspective, the best legislation would free forwarders, brokers and carriers from Interstate Commerce Commission licensing, rate and other controls. Second best would eliminate all control over transport intermediaries, including both brokers and forwarders, as the administration has suggested. But if you have time this month or this legislative session only to consider and act upon this one piece of legislation, by all means at least free the freight forwarder format from the encumbrances which make it all but unusable by most of the participants in the freight transport market. In doing that much, please make sure you preserve the degrees of freedom that forwarders now have, and do not impose double insurance requirements.

Thank you for your time and attention.

Summary of Provisions of S. 1124

Though the bill presents a mass of particulars, they can be conveniently and simply grouped under three headings.

First, the bill eliminates the authorities of the Interstate Commerce Commission to regulate the basic functions of freight forwarders, of general freight—chiefly by amending the relevant sections of the Interstate Commerce Act (ICA) to refer only to household goods freight forwarders.

Subject matter	Interstate Commerce Act sections modified	Sections of bill
ICC Jurisdiction. Tariff requirement. Requirement that use only ICC-regulated carriers	10521, 10523, 10561, 10704, 10708, 10712, 10749	6, 7, 7
Licensing requirement	10923, 10925	8
Limitations on common ownership with carriers	10930, 11323	8, 10, 11
Requirement of service and control over abandonment	10930, 11101, 11127	8, 9

Secondly, the bill alters other sections of the ICA to conform them to the absence of ICC jurisdiction over general commodities forwarders.

Subject	ICA section	Bill section
Special exemptions from ICC authority (eliminated)	10562	6
Terminate collective pricing privilege	10706	7
Omit reference to free freight forwarder services	10722	7
Omit provision for special rates for assembly and distribution operations	10725	7
Eliminate permission for special rates for limited-value shipment	10730	7
Eliminate prohibition against unreasonable discrimination against forwarders	10741	7
Eliminate provision allowing credit to government agencies	10743	7
Substitute ban on state interference with interstate forwarder activities for ICC control of such state activities	11505	11
Eliminate ICC and private enforcement authorities:		
Common control with carriers	11702	12
Private right of action for operating without a license	11708	12
Off-tariff pricing	11708	12
Abandonment of service	11908	13
Recordkeeping	11909	13
Information disclosures	11910	13

The third element of the bill is the set of forwarder-related statutory provisions which it maintains. Under Section 8, the ICC would retain authority to require general commodities freight forwarders to file with the ICC a "bond, insurance policy, or other type of security approved by the Commission sufficient to pay not more than the amount of the security, for loss of, or damage to, property for which the forwarder provides service." This section thus requires the forwarder to provide some sort of security for cargo damage.

This provision does not specify whether the cargo security is to be paid only if carrier cargo insurance does not compensate for loss. (Such an arrangement would presumably lower insurance costs, by reducing duplicate insurance coverage.)

Section 12 maintains some existing legal provisions relating to bills of lading and forwarder liabilities. Forwarders, like carriers, would be required to start legal action for payment within three years. Persons desiring to use forwarders would have to do so within two years. This section would also require a forwarder to issue bills of lading, as is now the required practice.

Mr. ANDERSON. Next is this panel of Mr. Frulla and Mr. Berman. Following the presentation of this panel, as soon as we get started and Mr. Shuster gets here, we are going to try to get out for lunch about 12 or close to it, so following this panel we will recess for about an hour and come back at 1 o'clock, if any of you are worried about lunchtime. It seemed like several of you were looking at your watches. I didn't know whether that meant lunch or airplanes or what it meant, but at least I can solve one of your problems.

Our next witnesses are a panel consisting of Robert Frulla, president of the Freight Forwarders Institute, and Larry Berman, general counsel of the Freight Forwarders Institute.

Mr. Frulla and Mr. Berman, we do have the prepared statements of both of you. They will both be made a matter of the record in their entireties. You may proceed.

TESTIMONY OF ROBERT J. FRULLA, PRESIDENT, FREIGHT FORWARDERS INSTITUTE, ACCOMPANIED BY DONALD C. EVANS, JR., ESQ., SPECIAL COUNSEL; AND LAWRENCE BERMAN, GENERAL COUNSEL, FREIGHT FORWARDERS INSTITUTE

Mr. FRULLA. Thank you, Mr. Chairman. My name is Robert J. Frulla. I am president of the Freight Forwarders Institute. With me today is Mr. Don Evans, special counsel to the association.

In the interest of conserving time, I have furnished a prepared statement for the record. My colleague, Mr. Berman, will summarize the position of the Freight Forwarders Institute on S. 1124. We

will then be more than happy to answer any and all questions that you have, Mr. Chairman.

Mr. Berman, would you summarize?

Mr. BERMAN. Mr. Chairman, my name is Lawrence Berman. I appreciate the opportunity to testify today in support of S. 1124, the Surface Freight Forwarder Deregulation Act—and I might interject here that I have taken the liberty of dropping the "1985"—on behalf of both Wescar Freight System, Inc.—Wescar, which is a freight forwarder—and the Freight Forwarders Institute. I have submitted a prepared statement for the record and wish to take this opportunity to summarize our position.

The regulatory reform of the railroad and trucking industry since 1980 has placed forwarders at a competitive disadvantage. Wescar is the last remaining freight forwarder in the Transway organization, which in 1979 owned seven freight forwarders. Employment went from 2,495 employees in 1979 to 835 in 1985. Revenues from those seven organizations dropped from $325 million in 1979 to $163.5 million for Wescar in 1985. Profits dropped from $16 million in profit in 1979 to a loss of $4.7 million in 1985. In spite of achieving a $25 million cost savings in a like period, Transway operations had a swing in profits of $20.7 million, which I can interpolate to be an almost $50 million swing if you include the cost savings, with 1984 and 1985 accounting for a combined loss of almost $10 million.

Although these results are not all due to the deregulation of truck and rail service, a substantial part is due to the following:

One, motor carriers and rail carriers can offer contracts for common carrier rates and service; forwarders cannot, being legally restricted to offer only common carrier service under tariff.

Two, motor carriers and rail carriers can change rates on a moment's decision, particularly in the motor carrier field under contracts; forwarders cannot, being required to file tariffs on public notice.

Three—and this is very important—90 percent or more of the forwarder's underlying carriage is provided by unregulated rail piggyback service, making it virtually impossible for the freight forwarder to timely adjust its rates to increases in its underlying costs, since forwarder rates require the filing of public notice.

For the foregoing and other reasons more fully set forth in my prepared statement, we urge passage of S. 1124 by the House of Representatives.

Mr. ANDERSON. Mr. Frulla, S. 1124 distinguishes between freight forwarders and household goods freight forwarders. How many freight forwarders currently engage in the household goods business and general commodities business?

Mr. FRULLA. I believe, Mr. Chairman, the question was presented to me before and I would have to say that I have to agree, I think it is somewhere between 70 and 80 of the household goods carriers, of the total freight forwarders. I am not sure, but I think when Mr. Wohlstetter comes up and testifies, he probably can give you a correct answer on that.

Mr. BERMAN. We should make it clear that the Freight Forwarders Institute does not represent household goods freight forwarders.

Mr. ANDERSON. Now does the Freight Forwarders Institute support all the provisions of S. 1124 as reported by the Senate, including the retention of regulatory controls for household goods forwarders?

Mr. BERMAN. Yes, absolutely.

Mr. ANDERSON. Mr. Berman, in your opinion what effect will the enactment of S. 1124 have upon the freight forwarding business? For example, do you think rates will increase or decrease, and do you think the forwarders will expand their business to engage in over-the-road interstate truck service?

Mr. BERMAN. There will not be, by virtue of the passage of S. 1124, a change in the rate structure today. There is enough discounting going on now, and I don't think that is going to change. What it will enable to the forwarder to do is to compete on the same basis with other carriers.

For instance, J.C. Penney was here testifying. J.C. Penney does a lot of its movement of freight by contract. We cannot bid on that service at the present time. If S. 1124 is adopted, we can bid on contract carriage for J.C. Penney.

Mr. ANDERSON. Now you state, Mr. Berman, that enactment of the Staggers Rail Act and the Motor Carrier Act have placed freight forwarders at a competitive disadvantage with the trucking and rail industry. Could you elaborate on that? For example, can you tell us what specific changes have occurred in the rail industry and the truck industry that have affected the forwarders in a negative manner?

Mr. BERMAN. Yes; they are two separate situations. First let me take it with respect to rail as an underlying carrier, which I touched on earlier. After many, many years, in the Motor Carrier Act of 1980, section 22(h), forwarders were granted the right by Congress as common carriers to be treated equally as other common carriers, to make contracts with rails to handle their underlying carriage; but in 6 weeks ex parte 230 was adopted by the Interstate Commerce Commission, which then allowed for the deregulation of all pricing of piggyback traffic. However, the forwarder continued, in the service that it provided, to be required to file a tariff.

Example: The rail carrier, because it does not file tariffs, can in a moment's notice tell us that a piggyback from New York to California is now $1,800. It takes us a minimum of 30 days to readjust our rates to our customers who put freight into our trailers on an LTL basis, to recoup that increase in cost. For 30 days we are at a loss.

With respect to the motor carriers, I think I touched on something with respect to J.C. Penney which is the best illustration, the most dramatic. We used to share in the J.C. Penney traffic of all kinds with the motor carriers. When the motor carrier was permitted to be both a common carrier and a contract carrier, we were effectively shut out of that business because we cannot go in and quote a contract with J.C. Penney.

Mr. ANDERSON. Any more questions?

[No response.]

Mr. ANDERSON. That completes the presentation. Thank you very much.

Mr. FRULLA. Thank you, sir.

Mr. ANDERSON. I already announced that at the end of this panel we will break for lunch. At this time we will recess and be back here at about 1 o'clock.

[Whereupon, at 11:45 a.m., the subcommittee recessed, to reconvene at 1 p.m., the same day.]

[Mr. Frulla's and Mr. Berman's prepared statements follow:]

STATEMENT OF ROBERT J. FRULLA ON S. 1124

Mr. Chairman, my name is Robert J. Frulla. I appreciate the opportunity to testify today in support of S. 1124, the "Surface Freight Forwarder Deregulation Act" on behalf of the Freight Forwarders Institute.

I have been active in the area of transportation since 1966. I have been associated with Transway International Corporation since 1966 and currently serve as President of the Freight Forwarders Institute.

The Freight Forwarders Institute is a not-for-profit membership corporation which has represented the interests of domestic surface freight forwarders since the establishment of regulation of the industry under the Interstate Commerce Act by amendment in 1942.

Regulated surface freight forwarders are at a distinct disadvantage vis-a-vis their competitors, motor and rail carriers and shippers' agents and brokers, who have benefitted from the deregulation of the trucking and railroad industries. This unequal competitive situation threatens the viability of the surface freight forwarding industry. A result, surface freight forwarders should be deregulated as quickly as possible, and we would urge the expeditious enactment of S. 1124.

Though perhaps less well recognized than other common carriers, freight forwarders are an integral part of this country's surface freight transportation system. Forwarders are intermodal carriers who take freight from shippers, usually in small shipments, combine it with freight of others and send it on its way via a motor or rail carrier. The circumstance that forwarders are both competitors and users of motor and rail carriers presents the regulated surface freight forwarder with two types of problems.

First, forwarders must compete with motor and rail carriers but are at a disadvantage in the area of pricing or rate making. The unregulated carrier can quote a rate or price to a shipper or consignee on the spot, and some carriers have been known to make their quotes retroactive. The regulated forwarder, on the other hand, is still required to publish its rates and file them with the ICC. The rates are also subject to a statutory notice period before they can become effective. Although forwarders may file freight-all-kinds (FAK) rates on only a one-day notice, the paperwork and communications required to file and publish a rate actually results in a two-to five-day process. Finally, filing and publishing rates is a cost that is borne only by the regulated forwarder. This expense can be thousands of dollars a year for a single forwarder.

Second, because the forwarder is an intermodal carrier, it relies upon, and is closely integrated with, underlying motor and rail carriers. This intermodal operational relationship has been substantially disrupted by the selective deregulation of surface transportation in 1980. A good example of the problem is in the use of railroads as underlying carriers. A railroad is the prime underlying long-haul carrier for approximately 90 percent of our traffic. Over the last twenty years, the box car has been replaced as the medium used by forwarders in rail movements by piggy back—also known as TOFC (trailer-on-flat-car). The ICC, under the authority of the Staggers Rail Act of 1980, deregulated TOFC over three years ago. As a result, the railroads, our underlying mode of transport, are completely deregulated while the surface freight forwarders, the largest users of TOFC, are regulated. The railroads can at will raise or lower rates and change rules on loading requirements, claims, or opening or closing ramps. Because forwarders are regulated and must publish our rates with a notice period, we cannot respond on a timely manner. We frequently accept freight at a published rate based on a rate or rules of an underlying carrier that will have changed before we have had a chance to accommodate the new rate or rules in our rate. It should be apparent that this is not a purposeful or feasible way to conduct a business. If surface freight forwarders are to continue to operate in the public interest as a viable transportation service for LTL freight, we must be allowed to operate under the same rules as our competitors and underlying carriers.

The Freight Forwarders Institute also supports an amendment to S. 1124 which allows an income tax deduction for freight forwarder operating authorities which is

virtually identical to the provisions adopted in 1981 allowing a deduction for motor carrier operating authorities.

Mr. Chairman, S. 1124 is a necessary and appropriate measure. We offer our support and whatever assistance we can provide. Thank you.

STATEMENT OF LAWRENCE BERMAN ON S. 1124

Mr. Chairman, my name is Lawrence Berman. I appreciate the opportunity to testify today in support of S. 1124, the "Surface Freight Forwarder Deregulation Act" on behalf of Wescar Freight System, Inc. (Wescar) and the Freight Forwarders Institute.

I have been active in the area of transportation and regulated industries since 1955 and am a licensed practitioner before the Interstate Commerce Commission (ICC). I have been associated with Wescar since 1973 and currently serve as a consultant to that company. Wescar was part of a diversified transportation and distribution company with extensive domestic and overseas operations, including freight forwarding and related freight transportation services, marine transportation, truck trailer manufacturing, and the marketing, distribution, and transportation of liquefied petroleum gas. It's parent company was Transway International Corporation which I presently serve as a Senior Vice President. Wescar is an intermodal, transcontinental surface freight forwarder regulated by the ICC.

In addition to my association with Wescar, I am General Counsel of the Freight Forwarders Institute, which was formed in 1942. It is composed of regulated surface freight forwarders, and before the ICC eased its entry policies, it represented between 70 and 80 percent of all cargo moved by surface freight forwarders.

Both Wescar and the Freight Forwarders Institute wholeheartedly endorse S. 1124, which would eliminate ICC regulation of most of the operations and practices of surface freight forwarders. Indeed, it is our opinion that deregulation is necessary if the surface freight forwarding industry is to survive. The loss of the industry would not only be devastating to the forwarders and their employees but detrimental to the public interest as well. The freight forwarding industry plays, and has played a crucial role in the freight transportation system. Small and medium size shippers depend upon freight forwarders to arrange for cost-efficient and expeditious transportation of their goods. Forwarders, among other things, consolidate small shipments (Less-than-trailerload or "LTL" freight) into full trailers, containers, or rail carloads thus permitting small shippers to share in the economies and efficiencies that might otherwise be available only to large shippers. It should also be noted that freight forwarders have been pioneers in the development of intermodal transportation.

The regulatory reform of the railroad and trucking industries in 1980, achieved through the Staggers Rail Act of 1980 and the Motor Carrier Act of 1980, has placed freight forwarders at a severe competitive disadvantage with the trucking and rail industries and with shipper agents, brokers, and others who use such carriers and do not have to themselves publish rates and rules. It has also created a situation in which forwarders are unable to coordinate their services with their unregulated underlying carriers because the regulatory burdens imposed on forwarders make it impossible for them to respond to changes in the rates and services charged by such carriers. I do not believe such results were intended by Congress when it substantially deregulated the railroad and trucking industries.

The impact of the regulatory reform legislation of 1980 on the surface freight forwarding industry has been substantial. I believe the experience of Transway in this regard is not only illustrative but representative of the industry as well. In 1979, Transway had seven subsidiaries engaged in freight forwarding and related services. In that year, Transway's entire freight transportation operations employed 2,495 persons and earned approximately $16 million in operating profits on $325 million in revenues. Between 1979 and 1985, the surface freight forwarding operations were consolidated, through mergers and the termination of unprofitable companies, into one remaining company, Wescar. In 1985, the entire freight transportation operations employed 835 persons and reported an operating loss of $4.7 million on $163.5 million in revenues. Surface freight forwarding operations accounted for almost the entire drop in the number of employees and in revenues and earnings. Moreover, the magnitude of this reversal is even greater than the $20.7 million difference in earnings performance for the years 1979 and 1985 would indicate. In 1984 the operating loss was $5.2 million on $208.5 million in revenue. 1984 and 1985 had a combined operating loss of almost $10 million. In addition, from 1979 through 1985 Transway has been able to achieve $29 million in annualized savings in operating

costs through the consolidation of its domestic forwarders. The dramatic decline in revenues and profits from surface freight forwarding operations, notwithstanding our re-organization and cost-cutting measures, admittedly cannot be attributed solely to the 1980 regulatory reform of the railroad and trucking industries, but we consider the major cause of that decline to be our inability to respond competitively to the practices of the railroads and motor carriers made possible by the 1980 legislation and to the activities of shipper associations, agents, and brokers who can take advantage of those practices.

The continued ICC regulation of freight forwarders is unnecessary. Deregulation would promote competition within the freight forwarding industry and between freight forwarders and railroads, trucking companies, agents, and brokers. Freight forwarders no longer need or desire antitrust immunity for collective ratemaking activities, with its attendant burdens and costs, nor is there any justification for substantial entry and licensing requirements, which have been administratively abandoned by the ICC, in any event. Freight forwarders have disbanded the ratemaking conference and no longer consult on rates. We do not, however, that section 8(d) of S. 1124, would retain limited ICC authority to impose a requirement that freight forwarders post a bond or other type of security to protect the users of forwarding services from loss or damage to cargo tendered to forwarders. We support this provision as an appropriate and least intrusive method of protecting the public from underfinanced or "fly-by-night" forwarders. The bill also retains and applies the provisions of the Carmack Amendment (49 U.S.C. 11707) to freight forwarding.

Mr. Chairman, we appreciate your efforts to bring this much needed change in the government regulation of the surface freight forwarding industry. Please feel free to call upon us for any assistance we can provide. I would be happy to answer any questions you might have at this time. Thank you.

AFTERNOON SESSION

Mr. ANDERSON. The meeting of the subcommittee will come to order.

Our next witnesses are a panel consisting of Alan Wohlstetter, executive secretary of the Household Goods Forwarders Tariff Bureau, and Calvin W. Stein, president of the Household Goods Forwarders Association of America, Inc.

We do have your prepared statements. They will be made a matter of the record in their entireties. You may proceed.

TESTIMONY OF CALVIN W. STEIN, PRESIDENT, HOUSEHOLD GOODS FORWARDERS ASSOCIATION OF AMERICA, INC.; AND ALAN F. WOHLSTETTER, EXECUTIVE SECRETARY, HOUSEHOLD GOODS FORWARDERS TARIFF BUREAU, AND GENERAL COUNSEL, HOUSEHOLD GOODS FORWARDERS ASSOCIATION OF AMERICA.

Mr. STEIN. Mr. Chairman, if you don't mind I am going to go ahead first and let my counsel wind it up.

Mr. ANDERSON. Good.

Mr. STEIN. Mr. Chairman and members of the subcommittee, my name is Calvin W. Stein. I am the president of the Household Goods Forwarders Association of America, Inc. Our position is fully set forth in my statement. In summary, it is that we are a part of the household goods moving industry and it would put us in a difficult competitive position if there was selective deregulation of the forwarding segment of the moving industry. Therefore, we ask that the bill as amended, that excludes forwarders of household goods, be favorably considered if freight forwarders are to be deregulated. We have no position as to whether the general commodity forwarders should be deregulated.

Mr. Chairman and members of the subcommittee, I want to state that I am most grateful for the opportunity to present these views on behalf of the Household Goods Forwarders Association of America.

Mr. WOHLSTETTER. Mr. Chairman, members of the committee, my name is Alan F. Wohlstetter. I appear, as the chairman stated, as executive secretary of the Household Goods Forwarders Tariff Bureau. I also operate in the capacity as general counsel for the Household Goods Forwarders Association, and I would be pleased to answer any questions which the committee may feel fall within my ambit.

I do not intend to read my statement. It is brief enough so that no summary is really required. My position is that the reasons which persuaded the Senate committee chaired by Senator Packwood to recognize that until the moving industry were to be addressed insofar as deregulation is concerned, that equity and fairness and the existence of a so-called level playing field mandated the continued regulation of household goods forwarders, that those reasons obtain today.

Now I do have a few comments. I noted that Ms. Gradison, in speaking for the Interstate Commerce Commission, first indicated that in her opinion there was no reason for separating out the household goods forwarders. I would state that I would expect nothing other from Ms. Gradison, who is well known for her unalterable, adamant position for all-out deregulation. I do not intend to get into that matter at this time but I think statement on its face makes clear that there is no reasoned analysis of the situation of the household goods forwarders.

In fact, I think that the dissenting comments of members of the Interstate Commerce Commission make that abundantly clear, and I endorse the comments of the dissenters. For example, the vice chairman, on page 6 of the Gradison statement, says very fairly, "Various considerations may or may not support the inclusion of household goods freight forwarders in the bill. The majority performs no meaningful analysis of these considerations, and I thus see no reason to take issue with the conclusion reached by the Senate on this matter." I endorse that completely.

Similarly, Commissioner Lamboli stated, "In the absence of closer analysis, the continued regulation of household goods freight forwarders remains an open question." I believe that the record before the Senate committee abundantly supports the dichotomy, and it is supported in Mr. Stein's statement and in my statement. Should this committee have any question, I would be pleased to address it in detail.

There is one last point that was made by Mr. Augello, which was a modification of the bill to provide for agents of process in all of the States in which a forwarder operated. The present situation under regulation, insofar as freight forwarders are concerned as distinguished from motor carriers, is that a single designated agent for service of process must be named by a regulated freight forwarder. We think that if that provision were continued, that is the maximum that should be imposed on freight forwarders. We don't think that this bill on deregulation should be used as a vehicle for intensifying regulation and imposing the requirement of an agent

of process in each of the 48 or 50 States where that requirement does not exist under the present law for freight forwarders.

Lastly, to the extent that there is a suggestion that this bill be amended to include brokers and subject them to deregulation, we are unalterably opposed to that amendment insofar as it covers brokers of household goods. Under the 1980 act, brokers of household goods were properly split off from regular brokers and there were certain provisions which related to them as distinguished from brokers of general commodities. If the committee and Congress should see fit to deregulate brokers, for the same reasons that freight forwarders of household goods should remain regulated, we take the position that brokers of household goods should remain regulated.

Mr. ANDERSON. Thank you, Alan.

On the question of brokers, my first question was for Mr. Stein, and then I also have a question for you.

My first question to Mr. Stein is, you maintain that household goods forwarders should be regulated because household goods carriers and brokers are still regulated. My question is, how extensive a role do brokers play in the shipment of household goods? For example, do they control the traffic of a significant number of household goods shippers?

Mr. STEIN. Mr. Chairman, I am really not in a position to answer that. I don't have the slightest idea. It is small, as far as I know.

Mr. WOHLSTETTER. I can state—it doesn't answer the question completely—but one of our problems that we have seen, I have seen directly, is that by using the device of a household goods broker, the household goods broker would enter into an arrangement with a household goods common carrier under a euphemism called contract carrier service, which is identical to common carrier service these days, and by that deprive the shipping public of the protections of the household goods rules which relate to household goods common carriers.

We feel that whenever a household goods shipper enters into one of these arrangements and the bottom falls out and the service is bad, that that injures the reputation of freight forwarders. Therefore, we would not like to see anything which makes it easier for the consumer regulations which apply to household goods movements to be evaded by a broker of household goods.

Mr. ANDERSON. I have another somewhat related question.

What reasons do the Department of Defense give for utilizing only freight forwarders that are regulated?

Mr. STEIN. I really haven't heard a real good reason. I do know that before the freight forwarders were regulated, they were not allowed to participate in the traffic to Alaska, and it was only through regulation that we were able to get the forwarders into participating in the tonnage to and from the lower 48 States and also in the domestic traffic within the lower 48 States.

Mr. WOHLSTETTER. I think, Mr. Chairman, in that regard one thing ought to be brought to the attention of the committee insofar as looking at deregulation in the future, perhaps, of forwarders.

We have found that, first of all, that maybe upward of 80 percent of the business engaged in by forwarders in the international area, to and from overseas points is for the military—what I should say

is, about 80 percent of the total overseas business is military. When you talk about deregulation by the ICC, we have found that we are just changing masters; that to the extent there is any release or lessening of regulation by the Interstate Commerce Commission, that it is replaced by some version of regulation by the Military Traffic Management Command, an agency which in my opinion is ill-equipped to administer any form of regulation.

For one thing, they are the shipper, so they come in with a bias which cannot be overcome; and, second, they are after all a military command with the normal movement of heads of the agency on a rotational basis, so that you have no continuity and you seem to be met with the unilateral, subjective, untutored ideas of whatever general shows up in that slot. It neither helps the Government nor does it help us.

Therefore, whenever it comes to regulation we have to really eyeball the question of whether we are talking about a transfer of regulation rather than deregulation in the absolute sense.

Mr. ANDERSON. Mr. Wohlstetter, when a household goods forwarder arranges transportation with a household goods carrier, how is that accomplished? In other words, do you accomplish this by paying the carriers the published rate, or do you enter into a contract at a negotiated rate? If the latter is true all or most of the time, why is it necessary to retain antitrust immunity for collectively set rates?

Mr. WOHLSTETTER. Really, Mr. Chairman, I view your question in two parts.

First, as to the first part, the movement and relationship with underlying motor carriers of household goods and general freight haulers takes place in two ways: One, by payment of tariff rates and, two, by negotiation of contracts under what were formerly known as 409 agreements, which a freight forwarder has the right to negotiate. Both of those devices are in being and actively used.

Insofar as the need for continued antitrust immunity is concerned, that really does not relate to the rate relationship between the forwarder and the underlying motor carrier. That relates to the overall rate which is charged the true shipper, the national account or the person who is moving. What occurs is that when there is an overall change in the household goods motor carrier moving industry, we have to be able promptly to revise the overall rates of the freight forwarders, one, so that forwarders can perform the service and, two, so that the shipping public promptly knows what the additional cost would be.

Now since the motor carriers of household goods can make their changes in their rate structure under their section 5[a] agreements with attendant antitrust immunity, we need the same type of immunity to reorganize our rates and adjust them promptly.

Mr. ANDERSON. Do we have any more questions?

[No response.]

Mr. WOHLSTETTER. Mr. Chairman, if I may, I would just like to stop the speculation about how many household goods forwarders there are. There are at least 110 who are approved by the Military Traffic Management Command, which means that they have been approved by the ICC and have a certificate. There are, I would

speculate, about another 100 who are not involved with the military business at all, so we are talking about more than 200.

Mr. ANDERSON. Two hundred and ten or thereabouts?

If there are no further questions, I will thank you, Cal Stein and Alan Wohlstetter, for an excellent presentation.

Mr. STEIN. Thank you.

Mr. WOHLSTETTER. Thank you.

[Mr. Stein's and Mr. Wohlstetter's prepared statements follow:]

STATEMENT OF CALVIN W. STEIN ON BEHALF OF THE HOUSEHOLD GOODS FORWARDERS ASSOCIATION OF AMERICA, INC.

Mr. Chairman and members of the subcommittee, my name is Calvin W. Stein. I am President of the Household Goods Forwarders Association of America, Inc. (HHGFAA), which is a non-profit organization whose membership consists of 76 specialized freight forwarders of household goods, unaccompanied baggage and used automobiles (hereinafter referred to as "household goods forwarders"). On behalf of the HHGFAA, I requested the opportunity to testify before the subcommittee in regard to S. 1124 and deregulation of the freight forwarding industry, for the purpose of presenting the position of the HHGFAA membership and specifically to present the reasons why Congress should continue regulation of household goods freight forwarders at this time.

S. 1124 as passed by the Senate continues Interstate Commerce Commission regulation of freight forwarders of household goods as urged by the HHGFAA. The HHGFAA endorses this version of the bill in the event Congress should determine to deregulate freight forwarders, other than household goods freight forwarders. However, the HHGFAA opposes any proposal which may be submitted to deregulate household goods freight forwarders.

The HHGFAA opposes deregulation of household goods forwarders so long as motor carriers and brokers of household goods continue to be regulated because such selective deregulation of the moving industry would place household goods forwarders at a material competitive disadvantage vis-a-vis regulated motor carriers and brokers of household goods for the following reasons:

1. Household goods forwarders are a separate and distinct class of freight forwarders, recognized by the Interstate Commerce Commission, in the issuance of specialized permits, the monitoring of fitness and ability and the oversight of consumer interests. Household goods forwarders differ from general commodities forwarders in the commodities they forward, the market in which they compete and the underlying carriers they use. Specifically, household goods forwarders forward the used household goods, automobiles and unaccompanied baggage of individuals; they compete for this business with regulated motor carriers and regulated brokers of household goods; and they must use the service of the same regulated household goods motor carriers with which they compete for underlying transportation. In contrast, general commodities forwarders forward general freight; they compete with brokers of general commodities and shippers' agents who are basically unregulated; and they use primarily T.O.F.C. rail service, i.e., piggyback, for underlying transportation, which itself is unregulated.

In sum, the differences from a public interest standpoint between the transportation of household goods and the transportation of general commodities are the same as those recognized by Congress in the Household Goods Transportation Act of 1980, where it enacted specific provisions for the class of household goods motor carriers, and in the Motor Carrier Act of 1980, where Congress retained a strict entry standard for brokers of household goods, while virtually deregulating brokers of general commodities, and where Congress continued Interstate Commerce Commission jurisdiction over released rates, which limit liability based on value, for household goods, both for freight forwarders and motor carriers, while deregulating released rates of motor carriers of other types of property.

The question of deregulation of all household goods carriers is not before this subcommittee, and I am not presumptive enough to address that issue. Our position is that so long as there is continued regulation of motor carriers and brokers of household goods, it is in the public interest and the interest of the household goods forwarder industry that household goods forwarders continue to be regulated.

Although deregulation may normally be an advantage to a carrier, the selective deregulation of one segment of the household goods market, viz. the household goods forwarders, while continuing regulation of household goods motor carriers and

brokers would upset the present competitive balance and would undermine the competitive position of household goods forwarders. As shown below, the likely result would be a reduction, rather than an increase, in competition.

2. Deregulation would jeopardize the continued participation of household goods forwarders in the Military Personal Property Program for the transportation of domestic shipments because the military has an established policy of using ony regulated carriers for household goods transportation. Prior to regulation of freight forwarders of household goods, the military excluded these forwarders from participation in the domestic transportation of household goods, which exclusion remained in effect until these forwarders were licensed by permit issued by the Interstate Commerce Commission. Presently the military does not permit any company to participate in its domestic or international household goods program unless it is licensed by the Commission as a motor carrier or freight forwarder of household goods.

Furthermore, if the military did continue freight forwarders in its domestic program, the likely result of the elimination of Commission regulation would be the promulgation of new regulations by the military. It makes little sense to substitute one form of regulation for another, particularly when our industry believes Commission regulation is essential to its competitive growth. Military regulation would not fulfill this need.

In any event, if household goods forwarders are deregulated and the military policy remains in effect, the result will be a reduction in competition for military traffic.

3. In addition to service for the military, the selective deregulation of household goods forwarders would undermine their ability to compete for the traffic of other government agencies, national accounts and C.O.D. shippers. Service is the primary consideration of all shippers of household goods, and the attitude of the shipping public today is that they are best protected in shipping household goods through the use of regulated carriers and forwarders. Given the alternative to using an unregulated household goods forwarder or a regulated motor carrier or broker, the regulated entity would be selected.

This is a matter of utmost concern to household goods forwarders in all areas of the market, but it is a most serious consideration in our industry's desire to become more effective competitors for national account and C.O.D. business, which today is controlled by motor carriers and brokers. While it is possible that deregulated household goods forwarder affiliates of major van lines might be able to penetrate the national account and C.O.D. market, deregulation would effectively eliminate the smaller independent forwarders, many of whom are members of the HHGFAA, from being effective competitors for this traffic.

4. The bill as passed by the Senate continues the prohibition against motor carrier discrimination in rates and service against household goods freight forwarders. (Sections 6(a), 7(g) and 7(k)). Retention of this prohibition is important to the household goods forwarder industry because many household goods motor carriers have household goods freight forwarder subsidiaries which they would treat more favorably than an independent competitive freight forwarder if it were not for this statutory inhibition.

I submit that the detrimental results from deregulation of household goods forwarders run counter to the objectives of the national transportation policy, 49 U.S.C. § 10101, which states that it is the policy of the United States to regulate the various modes of transportation so as, inter alia,

> "(A) To recognize and preserve the inherent advantages of each mode of transportation;
>
> (B) To promote . . . adequate, economical, and effective transportation;
>
> (C) To encourage sound economic conditions in transportation, including sound economic conditions among carriers; [and]
>
> (D) To encourage the establishment and maintenance of reasonable rates for transportation, without unreasonable discrimination or unfair or destructive competitive practices. . . ."

In sum, I submit that the selective deregulation of household goods forwarders, while continuing regulation of household goods motor carriers and brokers, would place the household goods forwarders at a material competitive disadvantage. The HHGFAA does not oppose the deregulation of forwarders of general commodities if the bill continues to provide for regulation of household goods forwarders.

Mr. Chairman and members of the subcommittee, I want to state that I am most grateful for the opportunity to present these views on behalf of the Household Goods Forwarders Association of America, Inc.

STATEMENT OF ALAN F. WOHLSTETTER ON BEHALF OF THE HOUSEHOLD GOODS FORWARDERS TARIFF BUREAU

Mr. Chairman and members of the subcommittee, my name is Alan F. Wohlstetter. I am Executive Secretary of the Household Goods Forwarders Tariff Bureau (HHGFTB), which is a rate bureau, operating pursuant to Order of the Interstate Commerce Commission under 49 U.S.C. § 10706 (formerly section 5a of the Interstate Commerce Act). The HHGFTB's membership consists of specialized freight forwarders of household goods, unaccompanied baggage and used automobiles (hereinafter referred to as "household goods forwarders").

I am testifying here today in support of continued regulation of household goods forwarders as provided for in the version of S. 1124 passed by the Senate and in opposition to any proposal that may be submitted to selectively deregulate household goods forwarders so long as the motor carriers and brokers of household goods with whom they compete continue to be regulated. My testimony is supplemental to that adduced by Calvin W. Stein on behalf of the Household Goods Forwarders Association of America and deals with rate matters.

Under our I.C.C.-approved Agreement No. 106, members of the HHGFTB are presently authorized, with antitrust immunity, to collectively consider, discuss and vote upon the establishment of rates, rules, regulations and practices governing the transportation in freight forwarder service of used automobiles, in interstate commerce, between all points in the United States.

There are presently 76 freight forwarder members of the HHGFTB which participate in tariffs published by the HHGFTB, and filed with the Interstate Commerce Commission. As required by statute, each member retains the right to take independent action.

Since the inception of the HHGFTB in 1972, there have been 356 proposals docketed and acted upon following the Bureau's docket proposal procedures, including proposals for general rate increases covering line-haul transportation rates as well as increases in accessorial rates and charges, independent action requests by individual member forwarders, changes in traiff rules and regulations, and changes in tariff structuring.

The members of the HHGFTB need and want continuation of their collective rate bureau and tariff filing activity so long as this is available to, and engaged in, by regulated motor carriers of household goods with whom they directly compete, and upon whom they are dependent for underlying transportation. Due to this dual status as competitors and users of regulated underlying carriers, household goods forwarders are directly impacted by rate bureau actions of household goods motor carriers in two important respects. As competitors, they must be able to respond promptly to rate and tariff changes, and as purchasers of motor carrier transportation, they must be able to react quickly to reflect increased or decreased costs in their forwarder rates. This they have been able to do effectively and economically through the HHGFTB by authorized collective action.

Due to this necessarily intertwined relationship, the tariffs of the HHGFTB are structured in almost identical fashion, and at competitive rate levels, with the tariffs and tenders issued by the two approved motor carrier rate bureaus whose membership comprises the household motor carrier industry. Historically, when either of these rate bureaus published general rate increases, changes in tariff rules application or revisions to accessorial charges, the HHGFTB has, for the benefit of its members, published appropriate amendments to its tariffs, following prescribed Section 5a procedures.

The regulated household goods motor carrier industry continues to have, through I.C.C.-approved rate bureaus, the ability under 49 U.S.C. § 10706(b) (3) (D) to take collective action, with antitrust immunity, with respect to:

(i) general rate increases or decreases, subject to certain procedures;
(ii) changes in tariff structures, subject to certain limitations;
(iii) the filing of independent actions for individual member carriers; and
(iv) changes in tariff rules and regulations having substantially general application throughout the area in which they apply.

It is imperative that the household goods freight forwarder members of the HHGFTB retain this same ability to act collectively in order to reflect changes in the cost of underlying transportation and accessorial services, which directly impact their ability to compete price-wise with household goods motor carriers.

Unless Congress continues the Section 5a immunity permitting our members to take collective action on general rate adjustments and other tariff amendments, issued by the household goods motor carrier rate bureaus, as authorized by 49 U.S.C. § 10706(b)(3)(D), household goods freight forwarders would operate with a seri-

ous competitive disadvantage. The majority of the Bureaus' members are small businesses, with limited resources. Without the means of collectively responding to tariff changes themselves collectively established by the household goods motor carriers, with whom they directly compete and are dependent upon for underlying transportation, our members would individually have to maintain their own "in-house" monitoring systems, a procedure which the HHGFTB presently provides. Such individual and excessively duplicate effort and expense would neither be efficient nor economic, and would not result in the most expeditious method of ensuring that the forwarders' rate structures remain competitive with those of motor carriers of household goods.

A measure of the difficulty and the expense that would be incurred were each household goods forwarder required to react individually to general rate increases or rule changes issued by the household goods motor carrier bureaus can be gained from a consideration of the scope of the tariffs used in the household goods transportation industry. Because of the nature of the commodity, not only are there required to be published numerous rules governing the service, but due to the special elements of household goods moving, accessorial services have to be provided for, with charges varying throughout the country. For example, the basic tariff of the HHGFTB consists of 168 pages, involves 15 line-haul rate sections, containing over 3,000 individual rates, and has 15 different schedules of accessorial charges on a city/country basis which results in over 15,000 separate rate applications. The overwhelming difficulty of individual response is self-evident.

Furthermore, the regulated freight forwarders have significantly contributed to the introduction and development of the door-to-door container method of transporting household goods, which is the primary method used to transport household goods between points throughout the United States, on the one hand, and points throughout the Free World, on the other. Under the door-to-door concept, the household goods shipment is loaded into a specially designed container at residence and placed under seal which is not broken until arrival at the new residence, thus limiting the possibility of pilferage and reducing damage through elimination of multiple handlings.

The door-to-door forwarder service involves a movement presently under I.C.C. tariffs, as well as pursuant to ocean tariffs regulated by the Federal Maritime Commission. Ocean rates are filed on a container basis or on a basis of weight or measurement, whichever produces the greater revenue to the ship. Because of the bulky nature of household goods, ocean charges are always on a measurement basis. As a result when a general rate increase or decrease is effected by the household goods motor carriers, it has to be considered in connection with the ocean charges then in effect, and only then can viable charges be established by the household goods freight forwarders to cover the services provided in the portion of the movement taking place within the United States. In this connection the HHGFTB has developed and published special import-export tariffs covering the performance of freight forwarder services throughout the United States. We frankly cannot see many individual forwarders having the ability and financial resources to consider and appropriately reflect the changes in the import/export tariffs required to maintain essentially viable and competitive service.

So long as forwarders of household goods must react promptly to rate changes made by regulated motor carriers of household goods through their approved rate bureaus, forwarders require the same ability to take collective rate action. We respectfully ask that this one facet of the household goods transportation industry not be deregulated thereby placing us at a substantial competitive disadvantage with our regulated motor carrier competitors.

On the other hand, we are aware that the general commodity forwarders principally compete with and use unregulated rail service and can therefore understand their desire to be deregulated. On that we take no position but for the reasons here stated ask that freight forwarders of household goods continue to be excluded from the proposed legislation.

I appreciate the opportunity of testifying before the Subcommittee and sincerely trust that my testimony and that presented on behalf of the Household Goods Forwarders Association of America fully explains our need to continue to exist as a part of the regulated household goods transportation industry.

Mr. ANDERSON. Our next witness is Robert Gallagher, general counsel, Transportation Brokers Conference of America, Inc.

Mr. Gallagher, we do have your prepared statement. It, will be made a matter of the record in its entirety. You may proceed.

TESTIMONY OF ROBERT J. GALLAGHER, ESQ., GENERAL COUNSEL, TRANSPORTATION BROKERS' CONFERENCE OF AMERICA

Mr. GALLAGHER. Thank you, Mr. Chairman. My name is Robert J. Gallagher, and I am general counsel of the Transportation Brokers' Conference of America. The Brokers' Conference is the trade association of brokers. It represents probably 90 to 95 percent of the active brokers in the country, and it has a membership of approximately 1,200 brokers at the present time.

Transportation brokerage is a child of deregulation. Prior to 1978 and particularly the passage of the Motor Carrier Act of 1980, brokerage had been regulated out of existence by the various rules and regulations that were adopted by the Interstate Commerce Commission. Although brokerage prior to the Motor Carrier Act of 1935 had been a significant and integral part of transportation, the regulatory burden that was imposed in the succeeding years drove it from the marketplace. When it was freed of regulation, it returned to the marketplace in 1980 and it spawned a series of innovative marketing proposals in transportation that have resulted now in there being more than 4,000 licensed brokers in this country and, in fact, they probably participate in more than $6 billion of motor carrier transportation.

Because we feel that deregulation has allowed us to enter the marketplace, we have been very supportive of all efforts in regard to deregulation. We have testified before the Senate on S. 1124 and evidenced our support of this proposal, and we wish to affirm before this committee the continuation of that support.

We believe that deregulation works; that if you put active, entrepreneurial forces into the marketplace, that they can make significant changes in it, that they can accomplish efficiencies and economies. We believe that if brokerage didn't work, that it would not have become such a rapidly burgeoning part of the transportation industry.

As I said in my statement, and, as Mr. Lee said, we feel that it is a matter of equity that other intermediaries should be given the same ability to operate in the marketplace. We therefore support the proposal to deregulate the freight forwarder industry. We would note that under the proposals that seem likely to be adopted, that freight forwarding would be operating under the same general rules as brokerage is now, in that there would be a surety bond, there may or may not be statutory agents, but there would be an ability to negotiate with both common and contract carriers in an attempt to achieve operating efficiencies.

Now, we came here pretty much as a very neutral observer of the household goods scene, and we had made no statement in the proposal, but after listening to Mr. Wohlstetter decry the advance of household goods brokerage I would be loath not to reply. Household goods brokerage has also performed a useful function in the transportation scene, and is becoming more and more important in that scene. These are not fly-by-night operators. Some of the household goods brokerage companies, for example, are Equitable Life Assurance Co., which is a $2 billion company; Home Equity; Merrill Lynch, which is a subsidiary of the Merrill Lynch stockbroker-

ing firm; and probably the largest in the industry is E.H. Management Co., which is a subsidiary of Ryder Freight Management.

Therefore, we don't have any particular comments on the household goods side of this bill but I could not let it pass unanswered that brokerage had created problems in household goods. We think that for many people it solved some of the problems associated with their moves.

Thus in closing, Mr. Chairman, I would simply say that it has been our experience that deregulation works. We are happy to welcome another player onto the playing field of entrepreneurial intermediary activity, and we support the bill.

Mr. ANDERSON. Thank you, Mr. Gallagher.

To keep the record clear, the statement of Timothy H. Lee, as you have presented it, will also be made part of the record.

Mr. GALLAGHER. Thank you.

Mr. ANDERSON. If there is no objection, so ordered.

Mr. Gallagher, I only have one question here: Some of the witnesses today have said that we should totally deregulate brokers. How do you feel about that?

Mr. GALLAGHER. The position of the conference is that brokerage should be deregulated, but whether this is the bill in which it should be deregulated, I am not capable of answering. I can check with the board of directors and have an answer back to Mr. Fryer on Friday or Monday.

It had been our thinking from the time that this bill entered the Senate, that the bill in which brokerage should be totally deregulated would be in the motor carrier bill. Why? Because brokers only work with motor carriers. Forwarders work with motor carriers, rail carriers, water carriers, and I guess now under exemption they work with air carriers. Brokers by definition are persons who arrange for the transportation of property by motor vehicle, and it would seem that symmetry and equal access would be better served when the motor carrier industry was totally deregulated to remove the last vestiges of regulation on the brokerage industry.

Mr. ANDERSON. Any further questions, either side?

[No response.]

Mr. ANDERSON. Mr. Gallagher, thank you very much.

There are no further witnesses. That completes our hearing for today. We stand adjourned.

[Whereupon, at 1:44 p.m., the subcommittee recessed, to reconvene at the call of the Chair.]

[Mr. Gallagher's prepared statement follows:]

STATEMENT OF ROBERT J. GALLAGHER, GENERAL COUNSEL OF THE TRANSPORTATION BROKERS' CONFERENCE OF AMERICA, ORLAND PARK, IL

My name is Robert J. Gallagher and I am General Counsel of the Transportation Brokers' Conference of America which is the trade association of brokers. This association was organized in 1978 and I have been General Counsel since that time and I wish to present testimony in this proceeding in regard to the Surface Freight Forwarding Deregulation Act.

IDENTITY AND QUALIFICATIONS

I am the General Counsel of the Association and I have been instructed to testify to the Committee that the Transportation Brokers' Conference of America supports this Act and has previously introduced testimony in the Senate on this Act. We

wish to incorporate the testimony that was previously offered in the Senate and I have attached to my brief opening remarks the statement of Timothy H. Lee, the Chairman of the Legislative Conference of this Committee which reaffirms our support of the testimony offered in the Senate.

TESTIMONY

The testimony which is attached of Timothy H. Lee speaks of the fact that brokers are a product of deregulation and that they support those efforts that are being made to free the transportation industry from the restrictions that had previously been imposed upon it.

As Mr. Lee points out, brokerage would not have been able to assume the major role in transportation that it has now assumed, if it had to continue to work under the stringent regulations that were imposed on it prior to the passage of the Motor Carrier Act of 1980. It therefore would hardly be equitable for us not to tender our strong support to deregulatory measures that are proposed in regard to another freight intermediary, the freight forwarding industry. Brokers are not experts on freight forwarding, although many of them probably will become freight forwarders if this Act is passed. But they are experts in the fact that if enterpreneurs in America are freed from restriction, they can make a significant impact on efficiencies and economies in transportation. It is for these reasons that I wish to have Mr. Lee's testimony in the Senate as augmented by his prepared statement in this proceeding brought to the attention of this Committee.

I am available for questions about the position of the Brokers' Conference.

STATEMENT OF TIMOTHY H. LEE, VICE PRESIDENT OF SUPERIOR TRANSPORTATION SYSTEMS, INC. OF WILSONVILLE, OR, AND CHAIRMAN OF THE LEGISLATIVE COMMITTEE OF THE TRANSPORTATION BROKERS' CONFERENCE OF AMERICA, INC.

My name is Tim Lee, and I am the Vice President of Superior Transportation Systems, Inc., and the Chairman of the Legislative Committee of the Transportation Brokers' Conference of America, Inc.

I wish to present testimony in this proceeding in regard to the Surface Freight Forwarding Deregulation Act.

IDENTITY AND QUALIFICATIONS

I am the Vice President of Superior Transportation Systems, Inc. (herein STS), which is one of the nation's leading transportation brokerage companies. I am also Chairman of the Legislative Committee of the Transportation Brokers' Conference of America, Inc., which is the trade association of transportation brokers. STS is one of the more aggressive of the new transportation brokerage companies which were founded in the wake of the Motor Carrier Act of 1980. In fact, the application filed by STS' affiliated motor carrier, Shippers' Freight Services, Inc. in 1980 for contract carriage authority to serve STS (ICC MC-152609 Sub No. 5) became the landmark decision that confirmed Congress' intentions as to the definition of a shipper and the proper role of a broker. Our business has grown from the less than three-quarters of a million dollars we had when we started this company in 1980 to a gross of $28 million for fiscal year 1985. Over the last three years, STS has paid over $150,000 in State and Federal income tax, and has been responsible for the payment of over $300,000 in highway and fuel use tax in our home State of Oregon alone.

In addition to our regular routing of TOFC, rail and LTL traffic, STS currently routes over 1,900 truckloads of freight on a monthly basis. Under Federal deregulation, as a brokerage, we have been able to develop new systems to serve smaller communities by promoting shipment consolidation and enabling truckers to make multiple stops to communities along their routes, without bringing their shipments to a central distribution point for redistribution. This has enabled us to provide more expeditious, more reliable service at a lower cost to smaller communities.

When my partner, Bill Kirkpatrick, and I started into brokerage in 1980, we started from scratch. We had experience in transportation, but we did not have a fleet of vehicles, nor did we have a long list of customers, but what we did have was the ability to go out and, through our own entrepreneurial skills, attempt to provide cargo carriage services for shippers and cargo aggregating services for carriers to allow us to give shippers the best service they could get, and give carriers traffic that would pay compensatory rates. Since that time, our growth has been spectacular.

I am not saying this to brag about the success of this company, but I want to make it clear that the reason we have been so successful was that the relaxed rules as to entry into brokerage and the relaxed rules as to how a broker could operate were necessary for such expansion.

Prior to the passage of the Motor Carrier Act of 1980, I doubt very much that our companies could have expanded and could have carved out the niche in the market place that we have been able to achieve now. When we set up our affiliated motor contract carrier, we realized that this would not have been permitted before the passage of the Act, and although it took us a considerable amount of time to push this one through the Commission, when we obtained that authority, we were in an excellent position to provide the type of innovative service that the Act contemplated.

We thus feel that deregulation has enabled us to provide a quality service to shippers and carriers, a service that we could not have provided under the old motor carrier regulations.

I therefore feel that as president of my own company, and as chairman of the Legislative Committee of the TBCA that we should indicate to the Congress our support of the Surface Freight Forwarding Deregulation Act.

I have been concentrating to a certain extent on my own company, but I am speaking also for the Transportation Brokers' Conference of America, Inc., which is also a result of the Motor Carrier Act of 1980. I have used my company as an example, but those goals that we have been able to achieve are symptomatic of the great strides that brokerage itself has been able to achieve since the relaxation of regulation. In 1978 there were fewer than 25 licensed brokers who were active in this country. In 1985 there are more than 4,000 licensed brokers. In 1978 the brokerage industry controlled less than $250,000,000 worth of transportation revenue. In 1986, the brokerage industry will participate in more than 6 billion dollars of motor carrier transportation.

Many of us think that the problems and dislocations that might have grown out of the change in regulation have been significantly lessened by the presence of the brokerage industry in transportation. Brokers have been able to obtain traffic for carriers where the carriers previously could not obtain traffic and thus the great growth in the carrier's operating authority has been supported by the greater ability of brokers to utilize that authority.

It is for that reason that the Transportation Brokers' Conference of America affirms its support for this legislation.

What I want to convey to this Committee first and foremost is that, in the opinion of this company of which I am Vice President, and the conference of which I am the Chairman of the Legislative Committee, deregulation works. It has put the entrepreneurial force back into American transportation. I have said this before but each passing month confirms the veracity of this statement.

In respect to this legislation, it would provide the same benefits for the freight forwarding industry that the Motor Carrier Act of 1980 provided to brokers. It would not be fair for us to praise the effects of deregulation on our industry and then not support efforts to extend these benefits to other transportation entities.

I am not an expert on freight forwarding, but I am an expert on deregulation, and our company is a product of deregulation. Therefore, my company and the TBCA support this legislation.

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